

82  
No. 430.

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IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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JOEL P. GEER,

*Appellant,*

*vs.*

GASTON JACOBI AND CHARLES RUFF,

ET AL.,

*Appellees.*

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TRANSCRIPT OF RECORD.

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Appeal from United States District Court,  
District of Washington.

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FILED  
FEB 1 9 1898



Records of District  
Court of appeals

82



# INDEX.

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	page
Affidavit of Publication .....	37
Amended Libel .....	28
Answer to Amended Libel ..	82
Bond on Appeal .....	349
Claim of Owner .....	15
Claimant's Exhibit No. 4 .....	282
Claimant's Exhibit No. 5 .....	284
Claimant's Stipulation for Costs and Expenses .....	16
Citation on Appeal .....	352
Citation on Appeal (original).....	357
Clerk's Certificate to Transcript .....	355
Deposition of C. H. Lewis .....	294
Direct interrogatories .....	298
Cross Interrogatories ..	302
Deposition of Charles Ruff .....	42
Examination in Chief .....	43
Cross-examination ...	45
Redirect Examination .....	45
Recross-Examination ..	60
Redirect Examination ..	72
Recross-Examination ..	77
Exceptions to Libel ..	18
Exhibit "A" ..	34

	page
Exhibit "B" . . . . .	34
Final Decree . . . . .	306
Intervening Libel of C. Hennigar . . . . .	11
Libel . . . . .	2
Libelant's Exhibit (Receipts) . . . . .	228
Libelant's Exhibit "AC" . . . . .	206
Minute Order . . . . .	21
Minute Order . . . . .	304
Monition and Attachment for Libel . . . . .	35
Monition and Attachment for Intervening Libel . . . . .	39
Notice of Hearing . . . . .	20
Notice to Set Cause for Trial . . . . .	107
Notice of Appeal . . . . .	339
Notice of Appeal . . . . .	341
Notice to Give Stipulation . . . . .	345
Opinion . . . . .	22
Order Allowing Appeal . . . . .	343
Order Approving Bond on Appeal . . . . .	348
Order Extending Time to Docket Cause . . . . .	1
Order to Transmit Original Exhibits . . . . .	354
Order of Default . . . . .	305
Order Sustaining Exceptions . . . . .	27
Order of Reference . . . . .	108
Petition for Appeal and Assignment of Errors . . . . .	310
Præcipe for Appearance for Libelants Gaston Jacobi and Charles Ruff . . . . .	8
Præcipe for Dismissal of Intervening Libel . . . . .	41
Præcipe for Monition . . . . .	10
Præcipe for Appearance for Intervenor C. Hennigar . . . . .	13

	page
Præcipe for Appearance of Claimant .....	16
Præcipe for Transcript on Appeal .....	353
Replication to Claim and Answer of Joel P. Geer ....	109
Stipulation .....	113
Stipulation of Intervenor for Costs ... ..	13
Stipulation of Libelants for Costs .....	9
Stipulation as to Intervening Libels .....	347
Supplemental Transcript of Record .....	359
Testimony for Libelant:	
Gustave Jacobi .....	114
Gustave Jacobi (cross-examination) .....	134
Gustave Jacobi (redirect examination) .....	158
C. W. Gould .. ..	159
C. W. Gould (cross-examination) ....	177
C. W. Gould (redirect examination) .....	188
J. H. Johnson .....	192
J. H. Johnson (cross-examination) .....	211
J. H. Johnson (redirect examination) .....	225
Joel P. Geer .....	226
F. B. Jones (recalled) .....	227
J. H. Johnson (recalled) .....	227
Testimony for Claimants:	
Joel P. Geer .....	229
Joel P. Geer (cross-examination) .....	244
Joel P. Geer (redirect examination) .....	257
Francis B. Jones .....	259
Francis B. Jones (cross-examination) .....	266
Francis B. Jones (redirect examination) ....	272
Francis B. Jones (recross examination). ....	275

Testimony for Claimants—Continued.	page
C. W. Gould (recalled) . . . . .	277
C. W. Gould (cross-examination) . . . . .	279
C. W. Gould (redirect examination) . . . . .	280
Joel P. Geer (recalled) . . . . .	281
Joel P. Geer (cross-examination) . . . . .	285
F. B. Jones (recalled) . . . . .	290
F. B. Jones (cross-examination) . . . . .	290
F. B. Jones (redirect examination) . . . . .	292



*In the United States Circuit Court of Appeals for the Ninth  
Judicial Circuit.*

JOEL P. GEER,

Claimant and Appellant,

vs.

GASTON JACOBI and CHARLES  
RUFF,

Libelants and Appellees.

### **Order Extending Time to Docket Cause.**

Upon the representations of the clerk of the District Court of the United States for the District of Washington, Northern Division, and for other sufficient causes appearing, it is by me ordered that the time within which the transcript of the record on appeal in this cause shall be transmitted to and filed with the clerk of the Circuit Court of Appeals for the Ninth Judicial Circuit, be, and the same is hereby, extended to and including the 20th day of February, A. D. 1898.

Dated Seattle, Washington, January 22, 1898.

C. H. HANFORD,

District Judge.

[Endorsed]: Filed Feb. 7, 1898. F. D. Monckton,  
Clerk.

*In the United States District Court for the District of Wash-  
ington, Northern Division.*

IN ADMIRALTY.

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE," and  
THE PORTLAND and ALASKA  
TRADING AND TRANSPORTA-  
TION COMPANY, and All Others  
Whom It May Concern,

Respondents.

**Libel.**

To the Hon. C. H. Hanford, District Judge of said court:

The libel of Gaston Jacobi, a resident and citizen of the State of New York, and Henry Ruff, a resident and citizen of the State of ———, against the steamship "Eugene," the Portland and Alaska Trading and Transportation Company, her alleged owners, and all other persons who may be owners or interested therein, or who may lawfully intervene in this action, which is a cause of civil action and maritime, respectfully show to the Court and allege, for a cause of action in favor of the libelant Gaston Jacobi, as follows:

**I.**

That during the times herein mentioned, and for a period of several days prior to the filing of this libel, the said steamship "Eugene" has been, and still is, lying in

port in the city of Seattle, State of Washington, bound on voyage, via the port of St. Michaels, Territory of Alaska, to Dawson City, in the Northwest Territory, Dominion of Canada, as libelants are informed and believe.

## II.

That during all of the times herein mentioned the said steamship "Eugene" was owned and operated by the said respondent, the Portland and Alaska Trading and Transportation Company, as libelants are informed and believe, which was and is a corporation duly organized under the laws of the State of Oregon; that during all of the times herein mentioned the said respondent, the Portland and Alaska Trading and Transportation Company, was, and still is, as libelants are informed and believe, the owners of and engaged in running and operating a certain other steamship, named the "Bristol," plying between the city of Seattle, Wash., and the port of St. Michaels, Alaska; and that during all of the times herein mentioned one E. B. McFarland was and is the general manager, and one F. C. Davidge & Co., was and is the agent of the said steamship "Eugene" and said "Bristol," and of the said respondent, the Portland and Alaska Trading and Transportation Company, and as such manager and agent were each duly authorized and empowered, on behalf of the said steamship "Eugene" and of said respondent company, to enter into any and all contracts for the transportation or conveyance of passengers or freight or baggage from the city of Seattle, Washington, to said Dawson City, via said port of St. Michaels.

## III.

That on or about the 19th day of August, 1897, by and through the said E. B. McFarland, general manager of said steamship "Eugene," and F. C. Davidge & Co.,

agents of said steamship "Eugene," and of said respondent company, the libelant, Gaston Jacobi, engaged passage for himself to be conveyed with three-quarters of a ton of baggage from the city of Seattle, Washington, to Dawson City aforesaid, and purchased of said manager and agents aforesaid two tickets for said passage, one of said tickets being for conveyance of himself and baggage by said steamship "Bristol" from Seattle, Wash., to said port of St. Michaels, Alaska, and the other of said tickets being for the conveyance of himself and said baggage from said port of St. Michaels, Alaska, to said Dawson City, N. W. T., and of which said ticket the following is a true copy, to-wit:

"No. 6. Portland and Alaska Trading and Transportation Company. Good for one passage from St. Michaels, Alaska, to Dawson City, N. W. T., via S. S. 'Eugene.' Name, Gaston Jacobi.

"(Signed) E. B. McFARLAND, General Manager."

That said libelant paid for said first named ticket from Seattle to St. Michaels the sum of one hundred dollars, and for said second named ticket from St. Michaels to Dawson City, the sum of \$200.00, and that libelant expended in the purchase of baggage, consisting of a miner's outfit, the sum of \$200.00.

#### IV.

That at the time of purchasing said tickets as aforesaid the said steamship "Eugene" and the said respondent company, owners thereof, caused it to be advertised publicly, and the said steamship "Eugene," through its general manager, agents, and owners as aforesaid, undertook and agreed with libelant that the said steamship "Eugene" would sail from the port of St. Michaels for said Dawson City, on the 24th day of August, 1897, or thereabouts, and would carry libelant over said route.

## V.

That the said steamship "Eugene" wholly failed and neglected to keep said contract on its part, and wholly failed and neglected to convey libelant from said port of St. Michaels to said Dawson City, as aforesaid, although libelant was at all times willing and ready to comply with said contract on his part, and did comply therewith; that by reason of said failure of said steamship "Eugene" to comply with said agreement on its part, libelant lost the said amount of \$300.00 paid by him for tickets as aforesaid, and lost the sum of \$200.00 paid by him for said miner's outfit, the same being by such failure rendered entirely worthless to him, and libelant has lost time by such refusal and failure of the said steamship "Eugene," and has been subjected to delay, inconvenience, in all to his damage in the sum of one thousand dollars.

And for a cause of action in favor of the libelant, Chas. Ruff, said libelant alleges as follows:

## I.

That all of paragraphs Nos. I and II of the first cause of action are hereby referred to and made a part of this second cause of action.

## II.

That on or about the 10th day of August, 1897, by and through the said E. B. McFarland, general manager of said steamship "Eugene" and of said respondent company and F. C. Davidge & Co., agents of said steamship "Eugene" and said respondent company, the libelant Charles Ruff engaged passage for himself, to be conveyed with three-quarters of a ton of baggage from the city of Seattle, Wash., to Dawson City aforesaid, and pur-

chased of said manager and agents two tickets for said passage, one of said tickets being for conveyance of himself and baggage by said steamship "Bristol" from Seattle, Wash., to said port of St. Michaels, Alaska, and the other of said tickets being the conveyance of himself and baggage from the port of St. Michaels to said Dawson City, N. W. T., and of which said last-named ticket the following is a true copy:

"No. 18. Portland and Alaska Trading and Transportation Company. Good for one passage from St. Michaels, Alaska, to Dawson City, N. W. T., via S. S. 'Eugene.' Name Chas. Ruff.

(Signed) E. B. McFARLAND, General Manager."

That said libelant paid for said first-named ticket from Seattle to St. Michaels the sum of \$100.00, and for said second-named ticket the sum of \$200, and that libelant expended in the sum of \$200.00, and that libelant expended in the purchase of said outfit the sum of \$200.00.

### III.

That at the time of purchasing said ticket as aforesaid the said steamship "Eugene" and the said respondent company, alleged owners thereof, caused it to be advertised publicly, and the said steamship "Eugene," through its general manager, agents, and owners as aforesaid, undertook and agreed with libelant that said steamship "Eugene" would sail from said St. Michaels for Dawson City on or about the 24th day of August, 1897, and would carry libelant over said route.

### IV.

That said steamship "Eugene" wholly failed, neglected, and refused to perform said contract on her part, and failed, neglected, and refused to carry libelant from said St. Michaels to Dawson City, and has failed and

neglected to make said trip or voyage from said St. Michaels to Dawson City, although said libelant fully complied with the terms and conditions of said agreement on his part; that by reason of such neglect, failure, and refusal, said libelant, besides the amount paid out by him for passage as aforesaid, to-wit, the sum of \$300, has been damaged in the sum of \$1,000.00 for loss of time, inconvenience, and injury to his business, and in the further sum of \$200.00, paid by him for said outfit, as aforesaid, the said outfit being now wholly worthless to him.

Wherefore, libelants pray that process in due form of law, according to the rules and practice of this Honorable Court in causes in admiralty, may issue out of this court for the attachment of the said steamship "Eugene," her tackle, apparel, and furniture, and that the said respondent corporation, and all other persons interested as owners or otherwise, be cited to appear and answer under oath, all and singular, the matters aforesaid, and that the Court decree a return of the passage money, to-wit, the sum of \$300.00, to each of said libelants, and that the libelants each recover the further sum of \$1,200.00 for their damages herein, and that said steamship be condemned and sold to satisfy the same, and that such other and further relief be granted as to the Court may seem just.

JAMES J. EASLY,  
Proctor for Libelants.

JOHN C. HOGAN,  
Of Counsel.

State of Washington,    }  
County of King.        } ss.

Gaston Jacobi, being first duly sworn, on oath says that he is one of the libelants named in the foregoing li-

bel, and makes this affidavit in his own and his colibellant's behalf; that he has read the foregoing bill, knows the contents thereof, and believes the same to be true.

GUSTAV JACOBI.

Subscribed and sworn to before me this 18th day of September, 1897.

[Notarial Seal.]

JOHN C. HOGAN,

Notary Public, in and for said State, residing at Seattle, Wash.

[Endorsed]: Libel. Filed Sept. 18, 1897. In the U. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

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*United States District Court for the District of Washington.*

GASTON JACOBI, et al.,

Plaintiff,

vs.

S. S. "EUGENE," etc.,

Defendant.

**Præcipe for Appearance for Libelants Gaston Jacobi and Charles Ruff.**

To the Clerk of the above-entitled court:

You will please enter our appearance as counsel and proctors for libelants in the above-entitled cause.

JOHN J. EASLY.

JOHN C. HOGAN.

[Endorsed]: Præcipe for Appearance. Filed Sept. 18, 1897. R. M. Hopkins, Clerk. H. M. Walthew, Deputy Clerk.



*In the United States District Court, District of Washington,  
Northern Division.*

IN ADMIRALTY. No. 1,128.

**Stipulation of Libelants for Costs.**

Whereas, a libel was filed in this court on the 18th day of September, A. D. 1897, by Gaston Jacobi and Charles Ruff, against the steamship or vessel called the "Eugene," her tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and the said Gaston Jacobi and Charles Ruff, libelant, and W. B. McGerry, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libelant or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the Gaston Jacobi and Charles Ruff, libelants above named, shall pay all such costs as shall be awarded against them by this Court, or, in case of appeal, by the appellate court.

GUSTAV JACOBI,  
CHAS. RUFF.

By JOHN C. HOGAN,  
W. B. MCGERRY, His Counsel.

Taken and acknowledged before me this 18th day of September, 1897.

JOHN C. HOGAN,  
Notary Public Residing at Seattle, Wash.

United States of America, }  
 District of Washington. } ss.

W. B. McGerry, being duly sworn, each for himself, says that he is a resident of the State of Washington, is worth the sum of five hundred dollars, over and above all his just debts and liabilities and property exempt from execution.

W. B. MCGERRY.

Sworn to this 18th day of Sept., A. D. 1897, before me.  
 [Notarial Seal.] JOHN C. HOGAN,  
 Notary Public Residing at Seattle, Wash.

[Endersd]: Stipulation of libelant for costs. Filed Sept. 18, 1897. R. M. Hopkins, Clerk. By H. M. Waltheu, Deputy Clerk.

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*United States District Court for the District of Washington.*

GASTON JACOBI, et al., }  
 vs. } No. 1,128.  
 STEAMSHIP "EUGENE."

### **Præcipe for Monition.**

To the Clerk of the above-entitled Court:

You will please issue monition and attachment, and deliver same to marshal for service.

JOHN J. EASLY.  
 JOHN C. HOGAN.

[Endorsed]: Praecipe. Filed Sept. 18, 1897. R. M. Hopkins, Clerk. H. M. Walthew, Deputy Clerk.

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*In the United States District Court for the District of Washington, Northern Division.*

IN ADMIRALTY.

C. HENNIGAR,

Libelant,

vs.

THE STEAMER "EUGENE," Her

Tackle, Apparel, etc.

No. 1,128.

**Intervening Libel of C. Hennigar.**

To the Honorable Cornelius H. Hanford, Judge of said Court:

The intervening libel of C. Hennigar against the steamer or vessel "Eugene," her tackle, apparel and furniture, whereof now is or late was master, in a case of action, civil and maritime, alleges as follows:

First.—That between Sept. 1, 1897, and Sept. 20, 1897, said libelant performed labor and services upon said steamer "Eugene" at the special instance and request of the master thereof, and that in pursuance of said request libelant did haul out said steamer and repair the same upon libelant's shipways at Ballard, Wash., and that libelant will be compelled to launch said steamer. That the reasonable value of said repairs, hauling out, launching and for time on said ways is (\$550) five hundred and fifty dollars; that payment was demanded but refused.

2. That the said vessel, her tackle, etc., is now within the said district.

3. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore the said intervening libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel and furniture, and against all persons lawfully intervening or having any interest therein, and that they, and each of them, may be cited in general and special to answer the premises, and all due proceedings being had, that the said vessel, her tackle, etc., may be condemned and sold to pay the claim aforesaid; and that the said intervening libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

C. HENNIGAR.

Sworn to Sept. 20th, 1897, before me.

[Notarial Seal.]

FRED. H. PETERSON,  
Notary Public Residing at Seattle, Wash.

FRED H. PETERSON,  
Proctor for Intervening Libelant.

[Endorsed]: Intervening Libel of C. Hennigar. Filed Sept. 20, 1897. R. M. Hopkins, Clerk. By H. M. Waltheu, Deputy.

*United States District Court for the District of Washington.*

C. HENNIGAR,

Libelant,

vs.

No. 1,128.

THE STEAMER "EUGENE."

**Præcipe for Appearance for Intervenor C.  
Hennigar.**

To the clerk of the above-entitled court:

You will please enter my appearance as proctor for libelant in the above-entitled cause.

FRED H. PETERSON,

Proctor for Libelant.

[Endorsed]: Præcipe for appearance. Filed Sept. 20, 1897. R. M. Hopkins, Clerk. H. M. Walthew, Deputy Clerk.

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*In the United States District Court, District of Washington,  
Northern Division.*

IN ADMIRALTY. No. 1,128.

**Stipulation of Intervenor for Costs**

Whereas, an intervening libel was filed in this court on the 20th day of September, A. D. 1897, by C. Hennigar against the steamer or vessel called the "Eugene," her tackle, apparel and furniture, for the reasons and causes in the said intervening libel mentioned, and the said Hennigar, libelant, and \_\_\_\_\_ surety, the parties hereto, hereby consenting and agreeing that in case of

default or contumacy on the part of the libelant or his surety execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and is bound in the sum of two hundred and fifty dollars, conditioned that the said Hennigar, libelant above named, shall pay all such costs as shall be awarded against him by this Court, or in case of appeal, by the appellate court.

C. HENNIGAR.  
By FRED H. PETERSON,  
His Atty.  
E. B. FOWLER.

Taken and acknowledged before me this 20 day of September, 1897.

[Notarial Seal] FRED H. PETERSON,  
Notary Public Residing at Seattle, Wash.

United States of America, }  
District of Washington, } ss.

E. B. Fowler, being duly sworn, each for himself says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities and property exempt from execution.

E. B. FOWLER.

Sworn to this 20th day of Sept., A. D. 1897, before me.  
[Notarial Seal] FRED H. PETERSON,  
Notary Public Residing at Seattle, Wash.

[Endorsed]: Stipulation of libelant for costs. Filed Sept. 20, 1897. R. M. Hopkins, Clerk. By H. M. Waltheu, Deputy.

**Claim of Owner.**

District of Washington, }  
Northern Division. } ss.

To the Hon. C. H. Hanford, Judge of the District Court  
of the United States for said District:

Joel P. Geer, master of the steamboat "Eugene," now within the District of Washington, for and on behalf of Yukon Transportation Company of Portland, Oregon, owner of the vessel called the "Eugene," her tackle, apparel and furniture, intervening for interest in said vessel, her tackle, etc., appears before this Honorable Court and claims said vessel, her tackle, etc., and states that Yukon Transportation Company of Portland, Oregon, is the true and bona fide owner thereof. And thereupon the said claimant prays that this Honorable Court will be pleased to decree to him a restitution of the said vessel, her tackle, etc., and otherwise right and justice to administer in the premises.

And the said Joel P. Geer, being duly sworn, deposes and says that no other persons except the said Yukon Transportation Company of Portland, Oregon, is owner of the said vessel, her tackle, etc., or of any part thereof, and that this affiant is master of said vessel, and the lawful bailee thereof on behalf of said owner.

JOEL P. GEER.

Subscribed and sworn to before me this 4th

[Notarial Seal]

C. E. REMSBERG,

Notary Public.

[Endorsed]: Claim of Owner. Filed Oct. 5, 1897. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy Clerk.

*United States District Court for the District of Washington.*

GASTON JACOBI, et al.,

vs.

No. 1,128.

S. S. "EUGENE," etc.,

**Præcipe for Appearance for Claimant.**

To the Clerk of the above-entitled court:

You will please enter our appearance as proctors for claimant and owner in the above-entitled cause.

WILLIAMS, WOOD & LENTHICUM,  
STRUDWICK & PETERS.

[Endorsed]: Praecipe for appearance. Filed Oct. 5, 1897. R. M. Hopkins, Clerk. H. M. Walthew, Deputy Clerk.

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*In the United States District Court, for the District of Washington, Northern Division.*

IN ADMIRALTY, No.

**Claimant's Stipulation for Costs and Expenses.**

Whereas, a libel was filed in this court on the day of September, A. D. 1897, by Gaston Jacobi and Charles Ruff, libelants against the steamship "Eugene" and the Portland and Alaska Trading and Transportation Company, and others, for the reasons and causes in said libel mentioned, and whereas a claim has been filed in the said cause by the Yukon Transportation Company of Portland, Oregon, and the said Yukon Transportation



Company and H. W. Castleman, his surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimant or its surety execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned, and each of them, ~~is~~ hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against by the final decree of this Court, or upon an appeal, by the appellate court.

YUKON TRANSPORTATION COMPANY.

By W. A. PETERS, Atty.

H. W. CASTLEMAN.

Taken and acknowledged this 5 day of Oct., A. D. 1897, before me.

[Notarial Seal]

W. A. PETERS.

Notary Public, in and for the State of Washington,

District of Washington, }  
Northern Division. } ss.

H. W. Castleman, party to the above stipulation, being duly sworn, says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities and property exempt from execution.

H. W. CASTLEMAN.

Sworn to this 5 day of Oct., A. D. 1897, before me.

[Notarial Seal]

W. A. PETERS,

Notary Public, in and for the State of Washington,  
Residing at Seattle.

[Endorsed] Claimant's stipulation for costs and expenses. Filed Oct. 5, 1897. R. M. Hopkins, Clerk. H. M. Walthew, Dep.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE" and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION COMPANY, and All Others  
Whom It May Concern,

Respondents.

### **Exceptions to Libel.**

To the Honorable C. H. Hanford, Judge of the above-en-  
titled court:

Now comes Joel P. Geer, claimant of the steamboat "Eugene," for and on behalf of the owner of said vessel, the Yukon Transportation Company of Portland, Oregon and excepts to those portions of said libel in relation to the claim of libelant Gaston Jacobi, contained in articles 2, 3, 4, and 5, of said libel, on pages 1 and 2 thereof, and to each and all thereof, in so far as said articles seek to establish or maintain a claim against said steamboat, "Eugene," or to establish a maritime lien thereon; for the reason that the allegations thereof do not disclose any admiralty or maritime claim or lien upon said vessel, whereupon an attachment should be found, and the same are impertinent and insufficient.

And claimant excepts to those portions of said libel in relation to the claim of libelant Charles Ruff contained in paragraph 2 of the first cause of action, made a part

of article 1 of said claim of said libellant Charles Ruff, and to articles 2, 3, and 4 thereof, all contained in page 3 of said libel, and to each and every part thereof; for the reason that the allegations thereof do not disclose any admiralty or maritime claim or lien upon said vessel whereupon an attachment should be found, and the same are impertinent and insufficient in that respect. Claimant further excepts to said libel in that same is defective in form, and not in accordance with the 23d rule of practice of the United States Courts in causes of admiralty jurisdiction, in this, that the nature of the cause is nowhere stated therein, nor whether it be a cause civil or maritime, or a cause of contract, or of tort, or of damage.

And claimant further excepts to said libel in this, that he is advised that there is a misjoinder of parties herein, in that the steamboat "Eugene" and the Portland and Alaska Trading and Transportation Company, and all others whom it may concern, are made parties respondent, which, by the principles of pleading, as well as by the rules of practice of this Honorable Court, cannot be joined in the same libel.

Wherefore, claimant prays that the libel may be dismissed with costs.

WILLIAMS, WOOD & LINTHICUM,  
Of Portland, Oregon.  
STRUDWICK & PETERS.  
Proctors for Claimant.

State of Washington, }  
County of King. } ss.

I, J. C. Flanders, one of the proctors for the claimant in the above-entitled cause, do hereby certify that I have compared the foregoing copy of exceptions to libel with

the original thereof; and that the same is a full, and true and correct copy of such original, and of the whole thereof.

J. C. FLANDERS,  
Of Proctors for Claimants.

Due service of the within 4 by certified copy, as prescribed by law, is hereby admitted at exceptions to the libel, , 1897.

J. J. EASLY,  
Proctor.

[Endorsed]: Exceptions to libel. Filed Oct. 5, 1897. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

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*In the District Court of the United States for the District of Washington, Northern Division.*

IN ADMIRALTY.

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE" and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION COMPANY, and All Others  
Whom It May Concern,

Respondents.

**Notice of Hearing.**

To Messrs. Williams, Wood & Linthicum, and Strudwick & Peters, Proctors for Claimant Joel P. Geer, on behalf of the Yukon Transportation Co.:

Take notice that at the courtroom of the above-entitled court, in the city of Seattle, Wash., on Monday, the 11th day of Oct., 1897, at the hour of 10 o'clock of said day, or as soon thereafter as the same can be heard, the above-named libelants will call up for argument and decision by the Court, the exceptions to the libel in said cause, interposed by the said Joel P. Geer.

Dated Oct. 6th, 1897.

JOHN J. EASLY,  
Proctor for Libelants.

JOHN C. LOGAN,  
Of Counsel for Libelants.

Service of copy admitted this 6th day of Oct., 1897.

WILLIAMS, WOOD & LENTHICUM,  
STRUDWICK & PETERS.

[Endorsed]: Notice of Hearing. Original. Filed Oct. 9, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

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October 12, 1897.

General Order Book, District Court, Vol. 3, page 418.

GASTON JACOBI, }  
v. } No. 1,128.  
S. S. "EUGENE," }

**Minute Order.**

Now, on this day, this cause coming on to be heard upon claimant's exceptions to the libel on file herein, the

Court, after hearing argument of respective counsel, takes said matter under advisement.

*In the District Court of the United States, District of Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants.

vs.

THE STEAMSHIP "EUGENE."

Respondent.

### **Opinion.**

Filed October 23, 1897.

In Admiralty. Libel in rem by Gaston Jacobi and Charles Ruff against the steamship "Eugene," to recover passage money and damages for breach of contract to carry the libelants, with their baggage, from Seattle, via St. Michaels in Alaska, to Dawson City, in the Northwest Territory. Heard on exceptions to the libel. Exceptions sustained.

JOHN C. HOGAN, for Libelants.

J. C. FLANDERS, for Claimant.

HANFORD, District Judge.—Each of the libelants alleges that the Portland and Alaska Trading and Transportation Co., a corporation, being at the time owner of the steamship "Eugene," entered into a contract to carry him with his baggage, on board the steamer "Bristol," from the city of Seattle, in the State of Washington, to St. Michaels in Alaska, and thence on board the

steamer "Eugene" to Dawson City, and thereupon issued two tickets, one being for passage from the city of Seattle to St. Michaels, for which he paid \$100.00, and the other for passage from St. Michaels to Dawson City, for which he paid \$200.00. A breach of the contract is alleged in this, that the steamer "Eugene" wholly failed to go to St. Michaels to receive the libelants, as agreed. The libelants allege that they have been injured and damaged by loss of the amount paid for their passage, and the cost of a miner's outfit, and loss of time, for which they each claim damages in the sum of \$1,000.00

The authorities are conflicting on the point as to whether a suit in rem can be maintained for breach of an executory contract to carry a passenger on board a particular vessel where the vessel has not entered on performance.

In the case of *The Pacific*, Fed. Cas. No. 10,643, it was held by Mr. Justice Nelson that in the case of a contract maritime in its nature and subject, it is not essential to give jurisdiction to an admiralty court, in a suit in rem, that the vessel should have entered on the performance, or that the breach should have occurred in the course of the voyage, and that when the contract has been entered into for the conveyance of goods or persons in a particular ship, the liabilities of the owner and of the ship attach at the same time.

In the case of *The General Sheridan*, Fed. Cas. No. 5,319, Judge Blatchford, held that the decision by Mr. Justice Nelson in the Pacific case, had been overruled by the Supreme Court in the cases of *The Freeman v. Buckingham*, 18th Howard 182; and *Vanderwater v. Mills*, 19th Howard, 82. These two cases may be regarded as the leading cases on opposite sides of the question. In a dictum by Judge Lowell in *Oakes v. Richardson*, Fed. Cas. No. 10,390, which was a suit in personam, the decisions of the Supreme Court supposed to overrule the

Pacific case, are treated as dicta, not having the force of decisions. In the case of *The Williams*, Fed. Cas. No. 17,710, in an elaborate opinion showing a careful examination of the numerous authorities, Judge Emmons sustained and followed the ruling of Mr. Justice Nelson. In the case of *Scott v. The Ira Chaffee*, 2 Fed. Rep. 401, Mr. Justice Brown, then sitting as District Judge for the Eastern District of Michigan, and who appears by the report of the *Williams* case to have successfully argued for the jurisdiction before Judge Emmons, denied the authority of that decision. Referring to the decisions of the Supreme Court in 18th and 19th Howard, he says:

“Those cases cannot be said to have definitely fixed the measure of liability. They seem rather to have announced in general terms a doctrine from which the Supreme Court has not as yet shown any disposition to recede.”

Then after reviewing at length the American and foreign authorities, he reaches the conclusion that the owner of a cargo has no lien on the vessel for the breach of a contract of affreightment until the cargo, or some portion, has been laden on board, or delivered to the master. In the case of *The Monte A.*, 12 Fed. 331, Judge Brown, of the Southern District of New York, carefully reviews the decisions, and in his conclusion sustains the ruling of his predecessor in the case of the *General Sheridan*.

In subsequent decisions, the Supreme Court seems to have regarded the declarations contained in the decisions in 18th and 19th Howard, as expressing the doctrine of that Court, and not as mere dicta. Mr. Justice Davis, in the opinion of the Court in the case of *King v. The Lady Franklin*, 8 Wall, 325-329, says:

“The doctrine that the obligation between the ship and cargo is mutual and reciprocal, and does not attach until the cargo is on board, or in the custody of the master, has been so often discussed and so long settled, that



it would be useless labor to reiterate it, or the principles which lie at its foundation. The case of *The Freeman v. Buckingham*, decided by this Court, 18th How. 182 is decisive of this case. It is true the bill of lading there was obtained fraudulently, while here it was given by mistake; but the principle is the same, and the Court held in that case that there could be no lien, notwithstanding the bill of lading. The Courts say: 'There was no cargo to which the ship could be bound, and there was no contract for the performance of which the ship could stand as security.' "

And again, in an opinion by Mr. Justice Davis, in the case of *The Keokuk v. Robson*, 9 Wall. 517-521, he reiterates:

"It is a principle of maritime law that the owner of the cargo has a lien on the vessel for any injury he may sustain by the fault of the vessel or the master; but the law creates no lien on the vessel as a security for the performance of a contract to transport a cargo until some lawful contract of affreightment is made, and the cargo to which it relates has been delivered to the custody of the master, or some one authorized to receive it. (*The Freeman v. Buckingham*, 18th Howard, 188.)"

In an opinion by Mr. Justice Clifford, in the case of *The Delaware v. Oregon Iron Company*, 14 Wall. 579-606, the case of *The Freeman v. Buckingham*, 18th Howard 182, is cited as an authority supporting the proposition that bills of lading, duly executed in the usual course of business, bind the owners of the vessel if the goods were laden on board or were actually delivered into the custody of the master:

"But it is well-settled law that the owners are not liable if the party to whom the bill of lading was given had no goods, or the goods described in the bill of lading were never put on board or delivered into the custody of the carrier or his agent."

These authorities are conclusive on the point that the right to proceed in rem for breach of a contract of affreightment does not exist unless the cargo, or a portion of it, has been delivered to the master of the vessel, or to his authorized agent. The authorities also hold that ships engaged in carrying passengers on the high seas stand on the same footing of responsibility, according to the maritime laws, as those engaged in carrying merchandise. (1 Am. & Eng. Enc. of Law, 2 ed., pp. 661-662.)

The weight of authority bears so strongly against the position of the libelants, that I am unwilling to set up my judgment in opposition. According to the authorities, it is not the making of a contract, nor the payment of the consideration therefor, which renders the vessel liable. The lien upon which the right to proceed in rem depends, does not attach until the goods or passenger have been placed within the care and under the control of the ship's master.

In the argument of the exceptions, it was insisted that the contract being entire, both vessels became liable from the time libelants started on their journey from Seattle to St. Michaels; but the libel fails to allege that they even rendered themselves or placed their baggage on board the steamer "Bristol," or that performance of the contract on the part of the owner of the vessels was ever commenced.

Exceptions sustained.

C. H. HANFORD,  
Judge.

[Endorsed]: Opinion. Filed Oct. 23, 1897. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants

vs.

THE STEAMSHIP "EUGENE" and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION CO.,

Respondents.

### **Order Sustaining Exceptions.**

The above-entitled action coming on to be heard upon the exceptions of the claimant, the Yukon Transportation Co., to the libel herein, on the 12th day of Oct., 1897, and after hearing the arguments of counsel of the respective parties, the Court being fully advised in the premises—

It is ordered that the said exceptions to the libel herein be, and the same hereby are, sustained, and libelants are given leave to amend their libel herein.

Dated this 23d day of Oct., 1897.

C. H. HANFORD.

Judge.

[Endorsed]: Order. Filed Oct. 23, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

IN ADMIRALTY.

GASTON JACOBI and CHARLES  
RUFF,

Libelants.

vs.

THE STEAMSHIP "EUGENE" and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION CO.,

Respondents.

**Amended Libel.**

To the Hon. C. H. Hanford, District Judge of said Court:

Now come the above-named libelants, Gaston Jacobi, a citizen of the United States and resident and citizen of the State of New York, and Charles Ruff, a resident and citizen of the State of Iowa, and, leave of Court being first obtained, make and file this their amended libel in the above-entitled action, against the steamship "Eugene," her tackle and furniture and apparel, and the Portland and Alaska Trading and Transportation Co., owners thereof, and all other persons who may intervene lawfully in this action, which is an action on contract and maritime; and for a cause of action in favor of the libelant Gaston Jacobi, allege as follows:

I.

That at the time of the commencement of this action and the filing of the original libel herein, the said steamship "Eugene" was lying in the waters of Puget Sound, at or near the port of Seattle, in the State of Washing-

ton, and within the jurisdiction of the above-named court.

## II.

That during all of the times herein mentioned the said Steamship Eugene was owned and operated by the said Portland and Alaska Trading and Transportation Co., which was and is a corporation organized and existing under and by virtue of the State of Oregon, entitled to do business within the State of Washington, having complied with the statutes of said last-mentioned State in relation thereto, and was engaged during the times herein mentioned as a common carrier by water of passengers, baggage, and freight between said city of Seattle, Wash., and Dawson City, in the N. W. T., Dominion of Canada; and that during all of said time one E. B. McFarland was the general manager and one C. W. Gould was the agent of the said steamship "Eugene" and of said respondent company, duly authorized and empowered to enter into any and all contracts on behalf of said steamship "Eugene" and of said company for the transportation of passengers, baggage, and freight, from said city of Seattle, Wash., to said Dawson City, N. W. T.; and during all of said time the said respondent engaged in operating a certain other steamship known as the Bristol in connection with its said business as a common carrier between the points aforesaid.

## III.

That on or about the 11th day of August, 1897, and prior and subsequent thereto, the said steamship "Eugene" and respondent company, through her owners, manager, and agent as aforesaid, caused it to be publicly and extensively advertised that the said steamship "Eugene," in tow of the said steamship "Bristol," would

leave the said city of Seattle, Wash., for Dawson City N. W. T., on the 23d day of August, 1897, and would transport and carry passengers to the number of 350 or less, including their baggage and freight, not to exceed 1,500 pounds each, and would reach said Dawson City not later than the 15th day of Sept., 1897; a copy of two of which advertisements is hereto attached and marked Exhibit "A" and Exhibit "B," respectively.

#### IV.

That relying upon the good faith of said advertisements, and believing the representations therein made to be true, and upon the further oral representations and promises of a like nature made to said libellant by the said owners, general manager, and agent of said steamship "Eugene," said libellant Gaston Jacobi, on or about the 19th day of August, 1897, made and entered into a contract with the said steamship "Eugene," through her said owner, manager, and agent, wherein and whereby the said steamship "Eugene" undertook, promised, and agreed to carry libellant from the said city of Seattle, Wash., to the said Dawson City, N. W. T., via the port of St. Michaels, and would leave Seattle, Wash., on said voyage on the 24th day of August, 1897, and would reach said Dawson City not later than Sept. 15th, 1897; and among other things it was understood and agreed by and between said steamship "Eugene," through its said owner, agents, and manager, and this libellant, that the said steamship "Eugene" would leave the said city of Seattle, Wash., on said voyage in tow of the said steamship "Bristol," and would be towed by the said "Bristol" from Seattle to said port of St. Michaels, Alaska, from which place the said "Eugene" would continue said voyage alone up the Yukon river, to said Dawson City, and would reach there on Sept. 15th as aforesaid, and in consideration of said promises and agreements on the part

of the said steamship "Eugene," this libelant, at the date aforesaid, engaged passage on said steamship from Seattle, Wash., to said Dawson City, and paid therefor the passage money, amounting to the sum of three hundred dollars for the conveyance of himself and 1,500 pounds of baggage, and received tickets for said passage.

## V.

That said libelant performed all of the terms and conditions of said contract on his part to be performed, and on or about the said 24th day of August, 1897, the said steamship "Eugene" entered upon the performance of said contract on her part, and left said city of Seattle, Wash., in tow of the said steamship "Bristol," and undertook to carry libelant and other passengers over the whole of said voyage and proceeded on said voyage upon the high seas for a distance of upwards of six or seven hundred miles up to the coast of Alaska, when the said steamship "Eugene" abandoned the said voyage and refused to proceed further thereon, and this libelant was landed at the city of Victoria, B. C., and said steamship "Eugene" wholly failed and neglected to keep said contract on her part.

## VI.

That this libelant, on the faith of said representations and agreements on the part of said steamship "Eugene," went to a large expense to prepare himself for said voyage, and purchased an outfit therefor at an expense of \$200.00, which was, by the failure of said ship to keep said agreement, rendered valueless to him, and lost a large amount of time during which he was hindered in carrying on his business, or doing any work, in all to his damage in the sum of \$1,000.00.

## I.

And for a cause of action in favor of the libelant Charles Ruff, libelants allege:

That paragraphs Nos. I, II, and III of the first cause of action is hereby referred to and made a part of this second cause of action.

## II.

That relying on the good faith of said representations, and believing same to be true, and upon the further oral representations and promises of a like nature made to this libelant by the said owner, manager, and agent of the said steamship "Eugene," said libelant, Charles Ruff, on or about the 19th day of August, 1897, made and entered into, a contract with the said steamship "Eugene," through her said agent, manager, and owner, wherein and whereby the said steamship "Eugene" undertook promised, and agreed to carry libelant from said city of Seattle, Wash., to said Dawson City, and to leave Seattle on said voyage on the 24th day of Aug., 1897, and would reach said Dawson City, and not later than Sept. 15th, 1897, and among other things it was understood and agreed between said steamship "Eugene" and this libelant that the said steamship "Eugene" would leave the said city of Seattle on said voyage in tow of said steamship "Bristol," and would be towed by the said "Bristol" from Seattle to St. Michaels, Alaska, from which place the said "Eugene" would continue said voyage alone up the Yukon river to said Dawson City; and in consideration of said promises and agreements on the part of said steamship "Eugene," this libelant engaged passage for said voyage from Seattle, Wash., to Dawson City, and paid therefor the passage money, amounting to the sum of three hundred dollars, for the conveyance of himself and 1,500 pounds of baggage.



## IV.

That this libelant performed all the terms and conditions of said contract on his part to be performed, and on or about the 24th day of Aug., 1897, the said steamship "Eugene" entered upon the performance of said contract on her part and left the said city of Seattle, Wash., in tow of the said steamship "Bristol," and undertook to carry libelant and other passengers over the whole of said voyage, and proceeded on said voyage upon the high seas for a distance of upwards of six or seven hundred miles, when she abandoned said voyage and refused to proceed further thereon, and this libelant was put off said ships at the city of Victoria, B. C.

## V.

That by reason of the failure of said steamship to perform said contract on her part, this libelant was greatly damaged, in the manner following: That on the faith of said representations and contract he prepared himself for said voyage at an expense of \$200.00 in money, and was hindered and prevented from carrying on his business for a long period of time, in all to his damage in the sum of \$1,000.00.

Wherefore, libelants pray that process in due form of law may issue for the attachment of said steamship "Eugene," her tackle, apparel, and furniture, that the Court decree a return of the passage money, to-wit, the sum of \$300.00, to each of these libelants, and that the libelants each recover the further sum of \$1,000.00 for their damages herein, and that said steamship be condemned and sold to satisfy the same, and for such other and relief be granted as to the Court may seem just.

GUSTAV JACOBI,

CHARLES RUFF,

Libelants.

State of Washington,  
County of King. ss.

Gaston Jacobi and Charles E. Ruff, being first duly sworn, each for himself, on oath says that he is one of the libelants named in the foregoing libel, that he has read the foregoing libel, knows the contents therefor, and believes the same to be true.

GUSTAV JACOBI,  
CHARLES RUFF,

Subscribed and sworn to before me this 22d day of  
Oct., 1897.

[Notarial Seal]

JOHN C. HOGAN,  
Notary Public, in and for said State, Residing at Seat-  
tle, Wash.

**Exhibit "A."**

**TO DAWSON CITY THIS YEAR!**

The S. S. "Bristol" to St. Michaels and Steamer "Eu-  
gene," St. Michaels to Dawson City Direct.

Monday, August 23.

Three-fourths of a ton of freight and Baggage free  
with passage.

FARE.—Seattle to Dawson City, \$300.

C. W. GOULD, Agent, 619 First Av., Seattle.

**Exhibit "B."**

**EUGENE FOR DAWSON CITY.**

The "Bristol" will take the "Eugene" to St. Michaels.  
The "Bristol" left Comox yesterday morning after tak-  
ing on a cargo of coal. She will leave Seattle August  
23 for St. Michael's having in tow the "Eugene." Ar-  
riving at the mouth of the Yukon, passengers and  
freight will be transferred to the "Eugene," which will  
at once hasten up the river, and, being a fast boat, is ex-

pected to reach Dawson City by September 15. She will remain all winter, and will be utilized as a hotel. The Yukon does not begin to freeze until October 1, and then only at the mouth, so that there will be ample time for passengers to prepare for the winter before the ice forms in the upper waters.

The passengers will travel on the "Bristol" to St. Michael's. She has room for 1,000 passengers, but will only carry about 350, that being the capacity of the river boat.

She ought to reach St. Michael's September 3. She has been thoroughly overhauled, and is one of the finest boats to leave this port. The entire trip will be under the direction of Capt. Lewis, who is familiar with the northern waters and Yukon river, having been in the service for fifteen years.

Passengers are being booked at Portland, Seattle, and Victoria, and Davidge & Co., who conduct the service, have opened an office at 619 First avenue. The fare is \$300 for the entire trip, and each passenger is allowed to carry 1,500 pounds of baggage free.

[Endorsed]: Amended libel. Filed Oct. 23, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

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### **Monition and Attachment for Libel.**

District of Washington, ss.

The President of the United States of America, to the  
Marshal of the United States for the District of  
Washington, Greeting:

Whereas, a libel hath been filed in the United States  
District Court for the District of Washing-  
[Seal] ton, on the 18th day of September, in the  
year of our Lord, one thousand eight hun-  
dred and 97, by Gaston Jacobi and Charles Ruff, against

the steamship "Eugene" and the Portland and Alaska Trading and Transportation Company, and all others whom it may concern, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamship, etc., or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship, etc., or vessel, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libelants.

You are therefore hereby commanded to attach the said steamship, etc., or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the Northern Division of the District of Washington, on the 7th day of October, A. D., 1897, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Hon. C. H. HANFORD, Judge of said court, at the city of Seattle, in the Northern Division of the District of Washington, this 18th day of September, in the year of our Lord one thousand eight hundred and 97, and of our Independence the one hundred and 22d.

R. M. HOPKINS, Clerk,

By H. M. WALTHER, Deputy Clerk.

JAS J. EASLY,

Proctor for Libelant.

Office of U. S. Marshal,  
 District of Washington. } ss.

In obedience to the within monition, I attached the steamer "Eugene," therein described, on the 18th day of September, and have given due notice to all persons claiming the same that this Court will, on the 7th day of October (if that day should be a day of jurisdiction ;if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Date: Oct. 25, 1897.

C. W. IDE,  
 U. S. Marshal,  
 By J. H. McLAUGHLIN,  
 Deputy Marshal.

Marshal's Fees and Expenses:

	Dollars.	Cents.
For serving attachment and monition . . . . .	2.00	
Miles traveled, 6, at 6 cents per mile. . . . .		.36
Preparing copy of notice of seizure for publisher . . . . .		.30
Publishing notice of seizure . . . . .	4.00	
Posting notice of seizure . . . . .		.50
Keeper's fees, 38 days, at \$2.50 per day . . . .	95.00	

AFFIDAVIT OF PUBLICATION

State of Washington, }  
 County of King, } ss.

H. Daniells, being sworn, says he is foreman of the "Seattle Times," a daily newspaper printed and published at Seattle, King County, State of Washington; that it

is a newspaper of general circulation in said county and State, and that the annexed was published in said newspaper, and not in a supplement thereof, and is a true copy of the notice as it was published in the regular and entire issue of said paper for a period of two consecutive days, commencing on the 23d day of September, 1897, and ending on the 24th day of September, 1897, and that said newspaper was regularly distributed to its subscribers during all of said period.

H. DANIELLS.

Subscribed and sworn to before me this 25th day of Sept., 1897.

[Notarial Seal]

C. A. HUGHES.

Notary Public in and for the State of Washington, Residing at Seattle.

Printer's Charges, \$4.00.

The United States of America, }  
District of Washington. }

Whereas, on the 18th day of September, 1897, Gaston Jacobi and Chas. Ruff filed a libel in the District Court of the United States for the District of Washington, against the steamer "Eugene," her boats, tackle, apparel, and furniture, in a cause of breach of contract, civil and maritime.

And whereas, by virtue of process in due form of law, to me directed, returnable on the 7th day of October, 1897, I have seized and taken the said steamer "Eugene" and have her in my custody:

Notice is hereby given, that a District Court will be held in the United States courtroom in the city of Seattle, on the 7th day of October, 1897, at 10 o'clock in forenoon of said day, for the trial of said premises, and the owner or owners, and all persons who may have or claim any interest, are hereby cited to be and appear at the

time and place aforesaid, to show cause, if any they have why a final decree should not pass as prayed.

J. H. McLAUGHLIN,  
Deputy U. S. Marshal.

[Endorsed]: Monition and attachment. Filed Oct. 25, 1897. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

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### **Monition and Attachment.**

District of Washington, ss.

The President of the United States of America to the Marshal of the United States for the District of Washington, Greeting:

Whereas, an intervening libel hath been filed in the United States District Court for the District of Washington, on the 20th day of September, in the year of our Lord, one thousand eight hundred and 97, by C. Hennigar, in case of Gaston Jacobi et al. against the steamer "Eugene," her tackle, apparel, etc., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamer, or vessel, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything

to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court to be held in and for the Northern Division of the District of Washington on the 7th day of October, A. D. 1897, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Hon. C. H. HANFORD, Judge of said court, at the city of Seattle, in the Northern Division of the District of Washington, this 20th day of September, in the year of our Lord one thousand eight hundred and 97, and of our Independence the one hundred and 22d.

R. M. HOPKINS, Clerk,

By H. M. Walthew, Deputy Clerk.

FRED H. PETERSON,

Proctor for Libellant.

Office of U. S. Marshal, }  
 District of Washington. } ss.

In obedience to the within monition, I attached the steamer "Eugene" therein described, on the 20th day of September, and have given due notice to all persons claiming the same that this Court will, on the 7th day of October (if that day should be a day of jurisdiction ;if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. And that on the day of 189—, I released the said vessel upon receiving a no-



tice of bonding, signed by the clerk of the U. S. District Court.

Dated Oct. 7th, 1897.

C. W. IDE,  
U. S. Marshal,  
By J. H. McLAUGHLIN,  
Deputy Marshal.

**Marshal's Fees and Expenses:**

For serving attachment and monition .....2.00  
Miles traveled, 6, at 6 cents per mile ..... .36  
[Endorsed]: Monition and attachment. Filed Oct. 25,  
1897. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy Clerk.

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*United States District Court for the District of Washington.*

GASTON JACOBI, et al.,

Libelants. )

vs.

No. 1,128.

THE STEAMER "EUGENE."

C. HENNIGAR, Intervening Libelant.

**Præcipe for Dismissal of Intervening Libel.**

To the Clerk of the above-entitled court:

You will please dismiss said intervening libel of C. Hennigar.

FRED H. PETERSON,

Attorney for Intervening Libelant, Hennigar.

[Endorsed]: Præcipe—Dismissal. Filed Oct. 25, 1897.  
R. M. Hopkins, Clerk.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI AND CHARLES  
RUFF,

Libelants.

vs.

THE STEAMSHIP "EUGENE" et al.,

Respondents.

YUKON TRANSPORTATION COM-  
PANY,

Claimant.

Deposition  
Charles Ruff  
Taken in Be-  
half of the  
Libelants  
Herein.

### **Deposition of Charles Ruff.**

Deposition of witness Charles Ruff, taken in behalf of the libelants herein, pursuant to an agreement hereto attached, marked Exhibit "A," and made a part hereof, said deposition being taken pursuant to said agreement at the office of Strudwick & Peters, in the Bailey Building, Seattle, Washington, on the 2d day of November, 1897, said libelants being present in person, and also by their attorney John C. Hogan, and the claimant, Joel P. Geer, by attorneys and proctors, Strudwick & Peters.

Whereupon it is agreed by and between the parties and attorneys here present that the deposition of Charles Ruff, a witness produced on behalf of the libelants, may be at this time taken; that the said witness may be sworn in the cause by George F. Fay, a notary public, and that said testimony may be taken down in shorthand and afterwards transcribed by Sara E. Amidon, and that the same so taken can be used in evidence on the trial in this cause, or any other proceeding therein, in the same manner as if regularly taken by the master of

this court and referees, the claimant hereby waiving all objection as to the manner of taking the testimony, but not waiving objections as to irrelevancy, materiality, competency and the like.

Whereupon libelants produce CHARLES RUFF, a witness in their behalf, and being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Examination in chief by JOHN C. HOGAN.

Q. You were one of the libelants in this action, Mr. Ruff?      A. Yes, sir.

Q. What is your age?      A. Forty-two.

Q. Where do you reside? Where did you reside before coming here?      A. Dubuque, Iowa.

Q. When did you come to the State of Washington?

A. The beginning of August, 1897?

Q. What was your purpose in coming here?

A. My purpose was to try and get to the Alaska gold fields—Dawson City.

Q. I will ask you whether or not you engaged passage with the conveyance of yourself and baggage from this city to Dawson City.

(Claimants object to form of question, as leading.)

A. That is—I arranged for passage after arriving here—yes, sir.

Q. When?

A. Around the 18th of August—somewhere near the 18th of August.

Q. Now, how did you come to engage passage?

A. Well I saw these posters passed around the city—

Q. What posters?

A. Posters stating that the Portland and Alaska Transportation Company, or some name like that, were selling passages to Dawson City on the steamer "Eugene" and "Briston" from the city of Seattle.

(Claimant objects to question, and asks to have answer stricken out, on the ground that there is no connection shown—no responsibility shown on the part of the masters or owners of the “Eugene” for these posters.)

Q. Now, you may state what you did with reference to engaging passage to Dawson City from the start—

A. That is from the time I bought the ticket or was starting to buy my passage? Well, I decided to go by that way, that is, by the Portland and Alaska Transportation Company. They offered through the newspapers and poster around the city that they would take me, give me passage to Dawson City for the sum of \$300. That was to be all that I was to pay for the trip. I was to have three-fourths of a ton of baggage free. That baggage, or outfit, as we called it, was bought at the stores here, and they delivered it at the wharf in care of the Portland Company.

(Claimant objects to all of this testimony unless witness shows who he means by “they.”)

A. The Portland and Alaska Transportation Company. The “Eugene,” I suppose.

Q. State whether or not you entered into a contract with any persons with reference to the conveyance of yourself and your baggage from this city to Dawson City in the North West Territory, and if so with what person.

A. Yes, sir.

Q. With whom?

A. With the Portland and Alaska Transportation Company—at the office, Mr. Gould’s office, on First Avenue.

(Claimant objects to that answer as being hearsay and a conclusion of law, and as to the competency.)

Cross-Examination.

By Mr. PETERS:

Q. Was your said contract in writing?

A. Well—I had only my ticket in writing.

Q. The only contract you had which was in writing was your ticket?      A. Yes, sir.

Q. Then the ticket was in writing or in printing?

A. Yes, sir.

(Claimant objects to any other testimony than that showed by the writing mentioned.)

Direct, by Mr. HOGAN:

Q. At what place did you arrange passage?

A. At the office of Mr. Gould, on First avenue, No. —

Q. On what date was that?

A. Around the 18th of August.

Q. Who was present there at that time?

A. Well Mr. McGuire—W. W. ———

Q. Well, did you pay any money at that time, and if so for what purpose?

A. Yes, sir, I paid \$300 for my passage to Dawson City, for all of my expenses there.

Q. State what transportation rights that was, to give you what rights yourself, your baggage, or anything of that sort.

(Objection by claimant on the ground that the contract is admitted to have been in writing; that should be produced and that alone.)

Q. Now, to clear up that point with reference to the writing, I will ask you what you got at that place in the way of a writing.

A. Well, I got a ticket—a passage to take me and my baggage to Dawson City.

Q. What did you do with your ticket?

A. That was turned over to certain people Davidge & Co., at Victoria.

Q. Have you ever seen it since?

A. No, sir, it has not been in my possession since. It is in their possession over there now.

Q. State what, if anything, was stated to you with reference to the manner of making the trip by these two boats, and as to the time of arrival at Dawson City, Alaska. Give a brief statement of what was said to you.

(Claimant objects to question on the ground that all such provisions appear in the ticket. It is the best evidence of these facts.)

A. Well, the evening we left here, the 23d, after my passage was bought for \$300 in one lump, I met Mr. McGuire, and we had a talk about the trip, and he told me to have all my freight sent to the Yesler Wharf, or one of the wharves—I think it was the Yesler—and to mark all the packages “Steamship ‘Eugene,’ Dawson City,” with my name on it, and that after it had gone to the wharf I would have nothing to do with the freight any more. Well, in a few days we took a trip on the steamer “Seattle” to Victoria; it was in the night. We left here about 10 or 11 o’clock, and we were getting ready to find out where we were going to sleep there, and Mr. McGuire came up and he said that he had beds for all the passengers as were to go on the “Eugene.” That is, we would not have to pay for our berths; that he had secured all of us berths and paid for them himself, and we did not have to trouble ourselves any further about anything at all, but just to take and keep on riding until we got to Dawson City.

Q. Now, I will ask you who was this Mr. McGuire, and what, if any, relation did he bear to the Portland and Alaska Transportation Company.

A. He was the president of the Portland and Alaska Transportation Company. I do not know his initials. He is not W. W.; he is the oldest brother out here in the city. There are three brothers; one is somewhere else.

Q. Where did you first see Mr. McGuire?

A. I saw him on the street and he talked with me about going to Alaska.

Q. You first saw him (Mr. McGuire) on the street about buying your ticket on the Eugene from him?

A. Yes, sir.

Q. State whether or not he was not the man in Gould's office when you bought the ticket.

A. No, sir.

Q. Who was that?           A. W. W. McGuire.

Q. What relation does he bear to the Portland and Alaska Transportation Company?

A. I understand he is the treasurer. That is it was stated in the papers that he was.

Q. You saw Mr. McGuire on the street after buying your ticket?           A. Yes, sir.

Q. About how long after buying your ticket?

A. I had met the gentleman before that I was introduced to him by a man who was trying to sell me the ticket; he was getting a commission, I suppose. I do not know his name.

Q. After buying your ticket you met him again?

A. I met him.

Q. About how long after?

A. Well, I should judge about the 19th or 20th of August. It was around about the 19th or 20th.

Q. At that time you had that conversation with him that you have already testified to?

A. Yes, sir. I can further state that I had not seen my baggage or outfit since I sent it to the wharf.

Q. Now, relying on that conversation with McGuire, the president, what did you do with reference to your baggage or the shipment of it?

(Claimant objects to the putting in witness' mouth the statement "relying on that conversation.")

Q. After that conversation what, if anything, did you do?

A. Well, after the ticket was bought I was in the hands of this company.

Q. I want you to give a detailed account of what you did after that conversation.

A. Well, in passing through a foreign country you have got to get out what they call a manifest. I had to get that out and have the manifests made out properly. I took that down to the wharf—

Q. State whether or not you delivered any goods to the wharves or not.

A. I delivered the goods.

Q. What were the goods, and where were they to go?

A. They were my miner's outfit and they were to go to Dawson City. They consisted of food, clothing, tent, and everything like that.

Q. Now, then, the next time after this that you saw McGuire where was that?

A. At Victoria.

Q. After meeting him the first time on the street here?

A. On board the ship—on the steamer "City of Seattle," at Seattle.

Q. How far was that from the wharf where he told you to deliver your goods?

A. The same wharf.

Q. Were the goods there at the same time?

A. I don't know. I had placed them in the hands of the company, and they were to take care of them.

Q. Did you have any talk with McGuire with reference to the goods?

A. Yes, sir.

Q. What was that talk?

A. He stated that the goods were now in his charge, and from now on we did not need to bother ourselves about anything; that all we had to do was to take and ride until we got to Dawson City, Alaska.



Q. Then it seems you took the "City of Seattle" from here to Victoria?      A. Yes, sir.

A. Yes, sir.

Q. When did you leave here?

A. The evening of the 23d of August.

Q. Was that the day you had this conversation with Mr. McGuire about the goods being in his possession?

A. It was that evening.

Q. Were there any other passengers aboard at that time who had engaged passage on this same expedition?

A. Yes, sir, I should judge there were forty.

Q. What was Mr. McGuire's business on that boat, the "City of Seattle"?

(Claimant objects to form of question, as being entirely hearsay, without showing some connection between Mr. McGuire and the defendant, who is intended to be sued.)

By Mr. HOGAN.—We propose to show the relation of Mr. McGuire to the Portland and Alaska Transportation Company, and relation of that company to the steamship "Eugene."

By Mr. PETERS, Claimant's Attorney.—It will be understood, then, that our exceptions are reserved conditioned upon such showing, with the right to move to strike out the testimony in that event.

A. His business was the same as he stated, was to see us start on our journey right, and at the same time to take charge of expedition. He was in the forward part of the ship in the cabin, with a slip of paper in his hand with the names of us passengers, and was giving out berths that he had engaged for us passengers, so that we would not have to pay any money for the use of the berths.

Q. That is, I understand yourself and your goods were transported from this city to the city of Victoria on board of this vessel, the "City of Seattle"?

A. Well, I turned over my goods to the Portland and Alaska Transportation Company and that is all I

could do. I placed my faith in these people as business people, and I calculated that they knew their business and that was the way of it. I was not bothering myself about them as they had taken charge of my goods. I went on the steamer "City of Seattle."

Q. Who paid for the conveyance of yourself and your goods on this trip from here to Victoria, on the "City of Seattle"?

A. Well, the goods was paid for by somebody, not by myself; my fare, the Portland and Alaska Transportation Company paid for it. The same as I have already stated, I turned over all my freight to these people at the wharf, and that settled it as far as I was concerned. I thought they were business people and would attend to it as they agreed.

(Claimant objects to witness answering question given outside of a response. Mr. Hogan hands witness a slip of paper and asks him if that was one of the posters that he had testified about which were circulated on the streets of Seattle.)

A. Yes, sir. Those are the bills that were passed around.

By Mr. HOGAN.—We offer identification in evidence, now. (Paper marked "Identification A.")

(Claimant objects on the ground of incompetency, no connection being shown, no responsibility for it on the part of the defendant.)

Q. Now, were there any other printed bills other than those? A. Yes, sir.

Q. Have you any other? A. No, sir.

By Mr. PETERS.—Where did you see those other bills?

A. Circulated around the streets and in front of the office of Gould.

Q. Is that where you bought your ticket?

A. Yes, sir. On First avenue, in this city.

Q. Did you read that bill? A. Yes, sir.

Q. Have you made any inquiries or search to find that bill, or a bill like it?

A. Yes, sir; but I can give you an idea of its contents.

Q. Where did you inquire?

A. Well, I inquired this town over about it.

Q. Have you been able to find that bill?

A. No, sir.

Q. Did it relate to this subject?                   A. Yes, sir.

Q. I will ask you what was the substance of that bill.

(Claimant objects to the evidence as incompetent, this being an attempt to show the substance of printed circular without proper foundation. That is secondary evidence.)

A. Well, of course I cannot read you fully out just the way it read. It was to Dawson City this year. Steamer "Eugene" and "Bristol" leaves here on or about the 23d day of August. It named the agents there on the bottom of that. I know Gould name was there, but I do not know his initials.

Q. State whether or you saw any advertisements in the newspapers here about that time with reference to this subject.                   A. Yes, sir.

(Claimant objects on the same grounds as to incompetency as before.)

Q. Now, returning again to the time you were on board the "City of Seattle" from this place to Victoria. What time did you arrive at Victoria?

A. About 8 o'clock August 24, 1897, in the morning.

Q. Was McGuire present there during the whole journey?

A. He made the journey to Victoria with us men in charge?

Q. Which one, the president of the company?

A. Yes, sir, the president of the company.

Q. Well, in what manner were you to continue the

journey further? What was said between McGuire and you? Go on and tell about it.

A. Well, we landed at Victoria, found there was no boat there, so we went up to the city. They said that the boat would be here in a few days, and went to the "Queen's Hotel"—that is, most of us—and while sitting outside of the hotel Mr. McGuire, the president of the company, he came along and he told us that he was going to leave us there that next morning, but that he would have Mr. McFarland, the manager of the company, over, and that he would continue the journey with us where he left off on the same; he says that we should not bother our heads about anything, but just keep right on riding until we got there.

Q. What did he mention, anything?

A. He said that everything would be all right, and that the company would take charge of us; that he was representing the company. He said that he would pay our board while we were at Victoria.

Q. Was anything said about your outfit?

A. Well, it was the supposition that they were taking care of it.

(Claimant asks to have that stricken out.)

Q. What did he say about your baggage, if anything?

A. Well, we had an argument over there about baggage on account of what charge was to be made, whether by ship measurement instead of the actual weight of the goods. They wanted to charge us ship measurement. Afterwards, Mr. McGuire told us that the baggage would go as the actual weight, whatever that would be; that was the way we would get our freight up there; that he would attend to it, but if we had over 1,500 pounds, we would have to pay excess of baggage on anything over. Fifteen hundred pounds was given as three-fourths of a ton, and that he would be responsible for that, and that he had taken it in his own hands to take

care of that part of it.

Q. Where and in whose possession and control was the baggage at that time?

A. Well, the same as Mr. McGuire said he would take care of the baggage, and would see that it would go by weight instead of measurement; that he would attend to those matters as the manager of the concern; that McFarland took charge of us after we left Seattle, and he paid my expenses there.

Q. Who paid your expenses there?

A. Mr. McFarland.

Q. What were those expenses?

A. They consisted of board and lodging.

Q. How long were you there?

A. We lodged there from morning of 24th of August until August 31, is when we left.

Q. State whether or not Mr. McFarland was there during that time.

A. He was there after the 25th.

Q. What were you waiting for at that time?

A. The steamship "Eugene."

Q. Who assumed all expenses?

A. The Portland and Alaska Transportation Company. Mr. McFarland said that he would pay anything that run up to not more than \$1.25 per day, and that every one should be satisfied with that; that if anyone went above \$1.25 he would not pay more.

Q. Where was your baggage while you were waiting in Victoria?

A. I don't know. I suppose it was there. They had it in charge.

(Claimant objects to all this kind of answer in the first place as being wholly irresponsive to the question, and in the second place as being wholly immaterial, irrelevant, and impertinent.)

Q. Did the boats afterwards arrive?

A. Yes, sir.

Q. When? A. On the 29th of August.

Q. What boats were they?

A. The steamship "Bristol" and "Eugene."

Q. Now, state whether you were on board of these vessels or either of them.

A. The night of the 30th we went aboard the "Bristol."

Q. At whose direction?

A. At the direction of Mr. McFarland.

Q. How many passengers were there at that time?

A. Ninety-five passengers.

Q. What did you get aboard of the "Bristol" for?

A. To journey to Dawson City.

Q. Where was the "Eugene" at that time?

A. The "Eugene," the morning of the 31st, came alongside of the "Bristol" at Victoria.

Q. Then what did you do farther with reference to continuing the voyage?

A. Well, we took our clothes—that is, all we took care of—and the outfits were put on—

Q. Who had charge of them?

A. The same people that had charge of them here, the Portland and Alaska Transportation Company.

Q. Then these vessels put off on that voyage to St. Michaels, did they, on the way to Dawson City?

A. Yes, sir.

Q. Well, state whether or not the "Eugene" was in tow of the "Bristol."

(Claimant objects to both the preceding questions as leading, viz., "that both these vessels put off on that voyage," and also the last question as leading.)

Q. Now, I will ask you to state, Mr. Ruff, what these vessels did with reference to undertaking this voyage to Dawson City.

A. Well, we got on the steamer "Bristol," part of the expedition on the 30th of August.

Q. And where was the "Eugene" at that time?

A. I don't know where she was then; we sighted her next morning.

Q. Before you got on the "Bristol" where was the "Eugene"?

A. The "Eugene" was at Port Townsend.

Q. And where did you see her first?

A. We saw her first at Victoria.

Q. About how long after you got on board the "Bristol"?

A. I suppose we sighted the boat about half an hour before she came to the ship; she came alongside of the "Bristol."

Q. Now, go on and tell about that.

A. The "Eugene" came alongside of the "Bristol." From where we could see I could not tell whether she was fastened to the "Bristol." She stayed there about 10 minutes—about that, I think—and then steamed away, and half an hour after the "Eugene" steamed away the "Bristol" started after her. After we got about six miles or so up the river or up the ocean we met the "Eugene," and the sailors threw out a line and made fast to the "Eugene," and from that time we towed the "Eugene" until we got to Comox or —————, as some call it, on Vancouver's Island.

Q. How far is that from Victoria?

A. I suppose it is about 165 miles, from what they told me.

Q. Go on and tell what you did there.

A. Well, we landed there for coal. The next day, or the second day—we were there three days—the "Eugene" began to unload part of her freight on to the steamship "Bristol." They were exchanging freight back and forth or doing something. I know they were unloading freight between the two boats, and—

Q. What was that freight?

A. That was the outfits of the passengers. Mine may have been among those changed, I do not know—

Q. What farther was done there?

A. Well, they worked about three hours taking that freight out, and changing from one boat to the other, and the next day, after that freight was changed, they changed some more freight. The "Eugene" was seized the same day by the British government, the second day of our stay. The third day of our stay the "Eugene" broke loose from the custom officers and steamed up the ocean towards Queen Charlotte's Sound. The next day, at 8 o'clock, the "Bristol" steamed off after the "Eugene"; afterwards we took the "Eugene" in tow, and we towed the "Eugene" all that day and night, and until around 3 or 4 o'clock the next afternoon; we landed back to a little fishing village called Elert Bay. We stopped there about thirty-six hours.

Q. State what took place there.

A. While stopping there there was another exchange of freight, and afterwards the two boats were tied up together and made fast.

Q. What was exchanged there?

A. All miners' outfits and such as that.

Q. Was yours among them?

A. Mine was among them just the same as all the rest of them. There was the outfits of 95 men, and mine was on one or the other ship.

Q. Well, go on; then, what next.

A. Well, we stayed there until the next day. You want me to say what we requested the captain to do?

Q. Tell what was done while at Elert Bay.

A. Well, we landed at Elert Bay. We went back there by the request of Captain Lewis, the captain of the "Eugene," and the steamer "Bristol" turned on account of his request to take the "Eugene" to the nearest port; that was when we got to—



Q. Why did you go back?

A. Captain Lewis stated that he wanted a survey of his boat made to find out the condition his boat was in, to see whether she was seaworthy or not.

Q. Go on and tell what was done.

A. Well, there was a committee of men appointed, one officer of the "Bristol," one or two of the "Eugene," and two men from the passengers; they went to work and investigated the hull of the "Eugene" and reported that the condition—

(Claimant objects to report as hearsay.)

Q. State what that report was.

A. They reported the condition of the steamer "Eugene" that she was not seaworthy, and that it was necessary to have some work done on her before they could proceed further.

Q. Was that report oral?

A. It was a written report, but the papers I can't produce, but this is what was reported to us by the committee.

Q. Did you see the report?

A. Yes, sir.

Q. You saw the committee that made the report and heard them talk about it?

A. I was one.

Q. Did Captain Lewis make a report?

A. Yes, sir.

Q. What was his report?

A. He made the same report as the rest.

Q. What did he say—

A. He joined in the written report. He was one of the officers who went down and examined the hull of the boat.

(Claimant objects to any testimony as to the contents of that report as incompetent.)

Q. Do you know where that report is?

A. Our chairman is some place in Alaska and he has got the papers with him. I made a special trip to Victoria to get the papers and they told me that he had taken everything with him.

Q. Where is he now?

A. He is supposed to be around Circle City, but if he is like all the rest of the miners he did not get there.

Q. State whether or not Captain Lewis of the "Eugene" made any statement to the passengers generally or publicly at any meeting of the condition of the boat, or at any time.

(Claimant makes the same objection here as to competency of any statement of Captain Lewis to bind these claimants.)

Q. I will ask you if Mr. McFarland, the agent, was present there at that time.

A. He was present when the committee came up from the hull of the boat and Captain Lewis went up to him and told him of the condition of the boat.

Q. And now I will ask you what Captain Lewis stated.

A. He stated that the "Eugene" was in a bad condition and was not fit to go out to sea unless she was repaired.

Q. Was McFarland present at that time?

A. Well, they were all requested to come up there: there was a lot of men; I suppose he was among them.

Q. He was on the boat, was he?

A. He was on one of the boats.

Q. What boat was this on?

A. The meeting was held on the "Bristol," with the "Eugene" alongside of her.

Q. What did Captain Lewis say?

A. He stated that the "Eugene" was not in a condition fit to go to sea, and stated at the same time, in the presence of McFarland, that there were five knees bro-

ken on one side of the boat and two on the other, and he considered it a pretty dangerous proceeding to go any farther with it, and Mr. McFarland began to laugh and said that those knees were broken two years before that.

Q. Well, then, did Captain Lewis refuse to go farther with his boat?

A. He said that if the "Bristol" and "Eugene" went on that every one of the men on the "Eugene" would get off and get into the "Bristol"; that they would not stay on the "Eugene" any longer—

(Claimant objects to witness' voluntary testimony.)

Q. I will ask you if you were on board the "Eugene" at any time.

A. Yes, sir, at different times.

Q. When?

A. At Comox two or three times, and Elert Bay.

Q. Were any of the other passengers on board of her?

A. Yes, sir, any amount of them.

Q. When were they on?

A. I believe mostly after we landed at Elert Bay. I know that two or three times we all went in there to examine the condition of the boat.

Q. Was there any meeting held of the passengers?

A. We had a meeting of the passengers.

Q. What was the purpose of that meeting?

A. Well, we were to hold a meeting, but the did not come; we were then invited to come down into the hold of the ship "Bristol," with Mr. McFarland and Captain McIntyre. They wished to submit a proposition to us, and invited all to come down to hear what they had to say, and Captain Lewis stated there that it was impossible for us to go any further, that is, to go to the Yukon river with the "Eugene," and stated that he had been on that coast for years, and he said there was no wood and no timber to build houses, and he said if we were to live in our tents this winter up there without fuel

that he considered that two-thirds of us men would not live until spring. Captain Lewis stated that the "Eugene" could not go to sea without repairs, and that it was not safe for us to go on without her—

Q. What did you do then?

A. We came back to Victoria.

Q. How did you come back?

A. I went back on the "Bristol" with the "Eugene" in tow.

Q. What was the reason of your coming back?

A. The reason was that by not having the "Eugene" in such a condition that she could not go to Alaska, that we could not go. If we had gone there without the "Eugene," and been dumped off like sheep, we would not have been able to live until spring, according to the statement of Captain Lewis, who had been in Alaska.

#### Cross-Examination.

By Mr. PETERS.—Q. Mr. Ruff, you say you are from Dubuque, Iowa?           A. Yes, sir.

Q. Had you ever been in this country prior to August last?           A. No, sir.

Q. You did not engage your passage then for Dawson City until the 18th of August?           A. No, sir.

Q. Where were you in the meantime?

A. In this city.

Q. You made various inquiries, did you not?

A. Yes, sir.

Q. And the inquiries which you made led up to your making application for this passage?

A. Yes, sir.

Q. Now, whom are some of the people whom you made inquiries of?

A. N. H. Thedinga & Co., 914 First avenue, a hard-

ware dealer, and a man who was trying to get me to buy the ticket.

Q. Now, the man that was trying to sell you the ticket was getting a commission, was he not?

A. I don't know.

Q. You supposed he was.

A. I don't know anything about it.

Q. You so stated in your direct examination you knew that he was trying to sell you a ticket on commission. You believed so when you stated it so just now, did you not?

A. I don't know whether he was to get a commission or not.

Q. You believed that it was true that he was getting a commission just now?

A. I suppose that he was getting a commission.

Q. Then you think he was a ticket broker?

A. I suppose so.

Q. Now, as to Mr. Thedinga, you formed an acquaintance with him here for the first time?

A. No, I knew him in the east before.

Q. You have known him previous to that time. You had a good deal of confidence in him. You confided in him your plan of going on this voyage?

A. Yes, sir, if I wanted to go this year.

Q. And he approved of it and made some investigation about it?

A. Well, he advised me that was my best way to get there if I went this year.

Q. You relied as much on Mr. Thedinga's advice as on anyone's else?

A. He told me that the people were all right; that they were business people, and stated that if I bought a ticket of them they would do things in a business way.

Q. He thought you had better buy your ticket there?

A. Yes, sir.

Q. Then you went in on that understanding?

A. Yes, sir.

Q. Relying on Mr. Thedinga?

A. On the advice of him and the honesty of the people I was dealing with.

Q. Now, who was the man you paid the \$300 to?

A. I paid it in the office of Mr. Gould.

Q. C. W. Gould?

A. No, I paid it to one of the officers there, and they give me ticket and everything right there.

Q. Do you know the man you paid the \$300 to?

A. I do not know his name, but I know him when I see him. It was in Mr. Gould's office.

Q. Who told you it was Mr. Gould's office?

A. His advertisement was there.

Q. That is the only way you knew it was Gould's office, because you saw the advertisement there?

A. No, sir.

Q. Where is the office?

A. Down here on First avenue, near First National Bank—this side. The best I can describe it near Kline & Rosenberg's clothing store, a few doors south. I am a stranger here; that is the best I can tell.

Q. Now, you have mentioned two Mr. McGuires as agents of the Portland and Alaska Transportation Company?

A. Yes, sir.

Q. Is it not a fact that your information in regard to their being agents of this company is based on other than their own statements to you?

A. No, sir.

Q. Did Mr. McGuire tell you he was the agent of this company?

A. Well, it was stated in the newspapers that he was.

Q. In which newspapers?

A. The newspapers of the city, that he was the agent of the company.

Q. Then that was the way you got the impression. In what newspapers?

A. I think in the "Post-Intelligencer," in some of your daily papers.

Q. Now, you stated, Mr. Ruff, that when you made out your manifests for your outfit and sent it down to the Yesler dock under the directions of Mr. McGuire, that when you had made such conveyance under Mr. McGuire's directions you paid no more attention to your outfit, having done this?

A. That is, if you will excuse me, I had my clothes and such things as that.

Q. But when you spoke of the transfer of freight and baggage between the "Bristol" and "Eugene" and "Seattle" you meant transfers of outfits?

A. I meant of outfits, groceries, hardware, and the like.

Q. Your clothing you kept with you on the "Bristol"?

A. Yes, sir.

Q. So that what you meant by stating that the "Bristol" and "Eugene" exchanged freight at Comox was transfer of these outfits from one boat to the other?

A. Yes, sir.

Q. As a matter of fact you never saw your outfit after you left the "City of Seattle"?

A. No, sir.

Q. When going on the boat "City of Seattle" did you learn who was the captain of that boat?

A. No, sir.

Q. Who was the manager of that boat?

A. I could not say.

Q. What company owned that ship?

A. I cannot say.

Q. Were there other passengers?                   A. Yes, sir.

Q. It was a boat on a regular run between here and Victoria, was it not.                   A. Yes, sir.

Q. A daily run?           A. I don't know.

Q. Don't you know it runs daily?

A. I think it runs several times a week, daily except Sunday.

Q. Now, there were many other passengers on the "City of Seattle" on the trip with you besides those who afterwards went on the "Bristol"?

A. I cannot say as to that.

Q. Was the "City of Seattle" run especially for the accommodation of the passengers for the "Bristol"?

A. Not that I know of. The same as I say, I am a stranger.

Q. You know that it is a fact that the "City of Seattle" was on its regular run?           A. I don't.

Q. You stated that it was a daily run?

A. No, sir.

Q. Mr. Ruff, did you not just say that it was a daily run except Sunday?

A. I said I thought it run between here and Victoria, and left here two or three times a week except Sundays. I know that it runs daily between these places.

Q. Did you not know that it was a daily run then?

A. No, I have found that out since.

Q. Have you been to Victoria since?

A. Yes, sir.

Q. Have you found out since who was the captain or the manager of the Seattle company?

A. No, sir, the "Seattle" now is out of that business.

Q. How is it, Mr. Ruff, that you know so much about the officers of the Portland and Alaska Transportation Company, and of the "Bristol" and "Eugene," and know nothing of the officers of the "City of Seattle"?

A. I had business with the officers of the Portland company.

Q. Is it not a fact that you learned all this since the suit was begun?           A. No, sir.



Q. Do you mean to say that you have not made inquiries?

A. I have made inquiries, but I have been acquainted with Mr. McGuire and Mr. McFarland. I got acquainted with W. W. McGuire; I met him first on the street here in Seattle.

Q. Now, you have stated that Mr. McGuire stated to you that he had provided you men your berths on the steamer "City of Seattle," have you not?

A. Yes, sir.

Q. How about this Mr. McFarland? From what source did you learn that he was the manager of the Portland company?

A. Because he said so himself; that was my source of information.

Q. What time of day on the 30th of August did you leave Victoria. A. I did not leave on the 30th.

Q. When did you leave?

A. On the 31st, around 8 o'clock in the morning.

Q. At that time you think that the "Eugene" was at Port Townsend? A. I don't know.

Q. You stated that the steamer "Eugene" was at Port Townsend when you left Victoria on the "Bristol."

A. No, sir.

Q. What did you say?

A. I said that when the "Bristol" left Victoria the "Eugene" was about four or five miles ahead of us. When she left Victoria we steamed out a very short time after.

Q. Did you see her there. A. Yes, sir.

Q. Tell all about it.

A. I was standing on the wharf near the "Bristol." The platform of the wharf extends out of the low water.

Q. The ocean wharf?

A. The outer wharf. The "Bristol" was lying alongside of this wharf; the "Eugene," from where I stood, came along on the outside of the "Bristol" and she stay-

ed there maybe 10 minutes, and some of the parties had a conversation I suppose on this subject. Then the "Eugene" backed out and steamed off.

Q. It did not tie up, then?

A. I don't know; from where I stood she came on the outside of the "Bristol." She must have touched the "Bristol" from the position she was in. Of course I was standing here on the wharf and the "Bristol" over there (showing by gesture the relative positions). Then she went on up the ocean towards Comox.

Q. And how soon did you overtake her?

A. I should judge the "Eugene" made 4 or 5 miles, but I am not positive as I don't know much about distance on the water. We met the "Eugene" somewhere around there and took her in tow.

Q. Well, what was the reason for taking the boat in tow?      A. Well, I don't know that.

Q. You did not inquire into that as particularly as you did other things.

A. I supposed that was the way they did; I know nothing about the ocean.

Q. Was she going?      A. Yes, sir.

Q. When you went into Comox you went in with this boat in tow, and you went in to get coal?

A. Yes, sir.

Q. Did your boat take coal there or did the "Eugene"?

A. I don't think the "Eugene" did.

Q. You noticed this transfer of outfits from one boat to the other?      A. Yes, sir.

Q. But you don't know whether the "Eugene" took on coal or not?

A. Well, now, I saw the men working there. I did not pay particular attention. I did not care about helping; I would watch awhile and then go away awhile, and then come back and watch.

Q. Then you don't know whether they took coal or not?      A. I don't think they did.

Q. Is it not likely, Mr. Ruff, that the putting of coal on a boat would attract your attention?

A. Yes, sir.

Q. And did it attract your attention?

A. Yes, sir.

Q. Yet you don't know whether the steamer "Eugene" took on coal at Comox or not?

A. The "Eugene" was out and alongside of us all the time; she was there on the outside of the "Bristol" all the time. What she done at night I don't know.

Q. What time did you get to Comox?

A. I should judge 9 or 10 o'clock at night, and left there around 3 or 4 o'clock, and we were there—

Q. Which boat left first?

A. The "Eugene" left first. She steamed out ahead of us.

Q. Now, is it not a fact that no outfits were taken on the "Eugene" from the "Bristol"?

A. They were handling freight back and forth there, and that was the expedition that was going to Dawson City. I saw them handling outfits back and forth.

Q. You did not see your own there?

A. There were 95 of us going on that expedition, and I have no idea whether mine was transferred or not, but I suppose it was just the same as the others. There were outfits transferred from the "Eugene" to the "Bristol" and other outfits transferred from the "Bristol" to the "Eugene."

Q. You say you had an argument with this McFarland at Victoria in regard to the space to be allowed you for your baggage or the measurement there, whether you were to have ship measurement or weight of the goods?

A. Yes, sir.

Q. Now, then, was your baggage there with you on the "Bristol"?      A. I cannot say.

Q. Where were your clothes and other baggage?

A. They was with me on the "Bristol."

Q. Where your outfit was you have already stated you could not tell?

A. Yes, sir.

Q. Now, when you left Comox the steamer "Eugene" left before you, and the next time you saw her she was where?

A. It was Queen Charlotte's Sound we met her, somewhere in the sound. The next morning the sailors sighted her about the hour of 9 o'clock.

Q. Was she still under weigh?

A. She was waiting for us there.

Q. Anchored?

A. I can't say. They threw her a line and we made fast the boat again with a steel hawser and towed her.

Q. Then where did you go?

A. Then we went from where we met the "Eugene" and took her in charge for Dutch Harbor.

Q. And you went into Alert Bay?

A. Returned to Alert Bay.

Q. What sort of weather was it?

A. Rainy weather.

Q. Was it rough?

A. I cannot say it was rough on the water from Comox to Alert Bay.

Q. Could you tell whether it was or not?

A. Well, I don't consider it was rough because if it had been more of us would have been sick.

Q. Have you ever been to sea before?

A. No, sir.

Q. You are not used to traveling?

A. I have been around the country lots and on fresh water lakes, but not on the ocean before.

Q. You don't think it was rough, then, at all?

A. Not very; I should say it was not rough.

Q. Now, you say a number of the passengers went on

the steamer at Comox and at Alert Bay; was that simply out of curiosity?      A. I was there myself.

Q. When was that, when she was tied alongside of the "Bristol"?      A. Yes, sir.

Q. Afterwards you went over here as a committee-man at various times?      A. Yes, sir.

Q. Who else was on that committee besides Captain Lewis?

A. I was not acting on that committee. I was on the committee that was appointed by the miners, what we called the miners' committee. The same as they have on all of these expeditions, a committee to run the affairs in a business way; that is, to look out for the miners. I was on that committee.

Q. And the committee of inspection was made up of what persons?

A. The same as I say, one of the officers of the "Bristol," Captain Lewis, and two or three more of the people in the miners' party.

Q. These people in the miners' party were not seamen, were they?

A. Two were captains—had been captains of vessels.

Q. They made the written report?      A. Yes, sir.

Q. To whom did they present that report?

A. The report was not an official report; they just reported on the condition of the board on writing, and the report was to the purser, Johnson, of the "Bristol." They stated that if we requested to be returned to Victoria—that is, if the "Eugene" would not go, that was that as the captain decided not to go with the boat, it was out of the question to go there alone with the "Bristol." We then as a committee asked the captain to turn around and take us back to Victoria, or some port where the repairs could be made, and Captain McIntyre and Mr. McFarland stated that they would take us back under the conditions that we would sign certain papers,

and we asked him to make out his papers so we could see what it meant. We read the papers and put a protest stating that we would sign the paper, but it was under protest that we were compelled to do it.

Q. Then the paper will show just what the protest was?       A. Yes, sir.

Q. Now, that paper was the release of the ship "Bristol"?

(Objected to as not best of evidence.)

A. It was supposed to be; that is, the release read that they wanted to go back to Victoria, but it was under protest.

Q. I will ask you what you understood it to be?

A. What I understood it to be was a release of the "Bristol" from any claims of damages on my part, but at the same time we had a protest written on it, and Mr. Johnson was willing to let us have it on.

Q. Now, then, when you turned around and went back to Victoria the "Eugene" stayed with you and she was made fast, and the purpose of going back to Victoria was to make repairs as the captain had stated?

A. No, sir.

Q. The Captain wanted to have the boat taken to some place where the necessary repairs could be made?

A. We turned back to Victoria on account of the "Eugene" not being in fit condition to go to St. Michaels as she was.

Q. Then, do I understand that you would not agree to go to St. Michaels after the boat was put in repairs?

A. No, sir.

Q. What do I understand you to mean?

A. The understanding was that we wanted to make some port. We requested to be taken to Victoria, as for Mr. McFarland it was impossible for him to keep his contract; that it was useless for us to go any farther without the "Eugene," as we could not live through the

winter without our outfits, and there was no fuel there. We could not get to Dawson City; we wanted to come back.

(Objected to by claimant.)

Q. Now, Mr. Ruff, Captain Lewis, of the "Eugene," told you that the "Eugene" was not fit to go any further unless there was repairs; he wanted to go back to some port where it could be repaired. Do I understand you that you meant that you were going back to Victoria for the purpose of having the "Eugene" repaired?

A. No, sir.

Q. You refused, then, to go on after they would get her repaired?

A. No, sir.

Q. You refused to go in order to have the Eugene repaired?

A. No, sir.

Q. Then what were you going back for?

A. Because we could not get any farther.

Q. Then you did not propose to get any further?

A. Yes, sir.

Q. You did not propose to get to Dawson City?

A. That was for those people to decide. When we went back to Victoria we still expected to get to Dawson City, but it was getting too late.

Q. What time did you get back to Victoria?

A. The 8th or 9th of September.

Q. Now, I understand you to say that you never traveled for any great distance on the water?

A. Yes, sir.

Q. Now, as to going on the "Eugene" at Alert Bay and at the last place, Comox, I understand that you went on simply out of curiosity?

A. The last place, at Alert Bay, it was just out of curiosity so far as I was concerned.

Q. Now, there are a number of your friends here who have similar tickets to the one you have obtained; are there any others here who were on the steamer "Bristol" with you?

A. Yes, sir.

Q. Is there one in the room? Mr. Jacobi, for instance; you have seen him and talked with him in relation to this case?

A. Yes, sir. I don't know whether he has got the same ticket or not.

Q. You think, then, that Mr. Gould sold you the only ticket?

A. I bought my ticket from him.

Q. It was a printed form, did you say?

A. Part of it was printed and part writing.

Q. And is it not the same as Mr. Jacobi's ticket?

A. I saw the ticket from a distance, but not to tell in any way at all.

Q. You never endeavored to get from any of those others that ticket to be used in this case? Mr. Jacobi is here in the room with you, is he not? A. Yes, sir.

#### Redirect Examination.

By Mr. HOGAN.—Q. Now, beginning where Mr. Peters left off in regard to the tickets, I understood you to say in your direct examination that Gould gave you a written order of some sort? A. Yes, sir.

Q. Was that printed?

A. There was some print and some writing.

Q. Where did you present that?

A. At Victoria.

Q. What became of it?

A. That ticket was taken up and we got another ticket of D—— & Co.

Q. Returning to the time of the signing of this paper on board of the "Bristol" for the return of yourself and your baggage, you may give a statement how that came about.

A. About returning to Victoria? It was signed by the passengers on account of the "Eugene" or the state-



ments made by Captain Lewis and Mr. McFarland that it was impossible to proceed any farther with the "Eugene" this year; that it would be impossible for him to furnish any boat to go, or to repair the "Eugene" in time.

Q. Who was present when he stated that?

A. I guess the 95. I saw lots of faces. They were all present, I think.

Q. Was that a general statement made to the passengers?

A. That was the general statement made to the passengers and was so stated by the captain of the "Bristol" as to continuing of the journey what he would do.

(Objected to by claimant as not proper redirect examination.)

Q. What did he state?

A. He stated that he would continue his journey regardless of the "Eugene."

Q. And what would he do with the passengers?

A. He said that he would take the passengers right up to the Yukon, and if there was any boat to take them up, and unload them on the shore, and let them do what they could to get through to the country.

Q. What was done then?

A. He stated that to the committee, that if they wanted to go back to Victoria, that with Mr. McFarland's permission and the signatures of Mr. Johnson and the rest of the crew, and he would return to Victoria, or otherwise he would take us up to St. Michaels.

Q. And what did Captain Lewis say in response to the proposal of Captain McIntyre?

(Claimant objects to question as leading.)

A. Captain Lewis stated that if we went to the Yukon river this winter he says that there was no wood, there is no lumber, and if we are put off on that shore this winter two-thirds of us will die before spring from exposure and cold.

Q. Did Captain McIntyre say that he would take you back?

(Claimant objects to question as leading; also as not proper redirect examination.)

A. He said he would go on to St. Michaels unless we signed that paper.

Q. I will ask you if anything was stated by McFarland at that time with reference to the responsibility of his company and the "Eugene" if you did sign that paper.

(Claimant objects on the ground that it is not proper redirect examination, and on further ground of no connection having been shown between Mr. McFarland and the claimant.)

A. Mr. McFarland stated that if we signed the paper that he would sign it and be responsible for anything that would happen to it after we got back.

Q. Responsible to who?

A. To us passengers, on account of not being able to get us up to Dawson City.

Q. Was the "Eugene" mentioned at that time?

A. It was the Transportation Company; he represented the company.

Q. Did you say that you signed that paper?

A. Yes, sir.

Q. And signed it under protest?                   A. Yes, sir.

Q. And you were compelled to sign it by these circumstances.                   A. Yes, sir.

Q. Did McFarland sign it?

A. He signed it after we all signed it.

Q. You understood that to be a release to the owners of the "Bristol"?                   A. Yes, sir.

Q. Now, as to another matter. There has been some suggestion here as to McFarland and Lewis of the "Eugene" desiring time to repair their boat and continue the journey.

A. No such proposal was made by them that said they wanted to get to the nearest port. They decided they could not do anything this year. Mr. McFarland in words said that he could not carry out his contract this year.

Q. Now, in case you had gone on to St. Michaels, were you in any way equipped to pass the winter?

A. Yes, sir.

Q. Were you provided for and provisioned with reasonable safety.

(Claimant objects to repeated question, the witness having definitely answered the question.)

A. As far as equipment, clothing and food were concerned we were in good shape, but not in fuel and such as that.

Q. How about shelter?

A. We had nothing, the same as I stated we had nothing; that is Lewis' own statement.

By Mr. HOGAN.—I now wish to examine the witness with reference to the damages he sustained as alleged in his libel, at this time having overlooked it in the examination in chief.

Q. Now, by reason of the failure of this Transportation Company to keep its agreement to take you to Dawson City, I will ask you whether or not you suffered any damages or loss, and if so, how much, and in what nature.

(Claimant objects to question as leading and as calling for a conclusion of law.)

A. I suffered loss in this way, I suffered loss in not getting up there and getting to work at mining.

(Claimant objects to any testimony of any damages, or any measure of damages as wholly incompetent, except as to the passage money paid.)

Q. About how much did you pay for your outfit?

A. I paid for my outfit—it amounted along about \$170 or \$180.

By Mr. PETERS.—It is understood that the objections of the claimant are repeated to each item of damages.

Q. State how much damage you suffer.

A. Well, I figured on going up there and doing blacksmithing this winter, and I figured that my time was worth at least \$15 per day up there. By having provisions enough along to keep me a year I should be able to make that amount of money every day.

Q. How much time did you lose?

A. I lost from September 15—I suppose that was the time they promised to land us up there—and until now, and from now on until spring.

Q. Have you done anything in the line of work?

A. No, sir.

Q. Have you been able to get work, have you tried?

A. Yes, sir, but I could get none.

Q. What is your time worth since the date they undertook to deliver you at Dawson City until the present time?

A. That was the 15th of September. Fully seven or eight hundred dollars.

Q. How much, if anything, did you lose on your outfit in value?

A. I had to sell my outfit since I came back here. I lost on the outfit about \$50, between \$40 and \$50.

Q. Does that include any charges you had to pay?

A. The charges are outside of that.

Q. What charges were there?

A. There were the charges here, and from Victoria here, drayage, etc. I paid charges in removing my outfit and getting it back to here fully \$8.00.

Q. How much did you lose by reason of the failure of the Transportation Company to land you up there?

A. I have lost from the time we left here, the 23d of August, until this date.

Q. Was your time during that interval worth anything?      A. Yes, sir.

Q. How much?

A. I considered it worth, as I stated, \$15 a day to me.

Q. What is your business?

A. It is a mechanic and machinist.

Q. How long have you worked at that business?

A. About twenty-seven years.

Q. I will ask you for about how long you were prevented from carrying on that business by reason of this expedition failing to get to Dawson City?

A. I have been prevented—well, if I had not started here on my trip I would have left here. I have been prevented from the time I started on my trip.

Q. How much can you earn at your business?

A. On an average \$2.90 per day.

By Mr. PETERS, Claimant's Attorney—We move to strike all of this line of examination, repeating our objections as to incompetency and immateriality.

#### Cross-Examination.

By Mr. PETERS.—Q. Now you say that you lost \$15 per day to the amount of seven or eight hundred dollars; that you expected by what you understood that a mechanic of your ability would get \$15 per day in Dawson City, that is what you meant when you say you have lost \$15 per day by not getting up there, is it not?

A. Yes, sir.

Q. Now, you left Victoria on the 31st of August?

A. Yes, sir.

Q. You got back to Victoria on what date?

A. Between the 8th and 9th of September.

Q. So you were gone, all told, eight days?

A. Between eight and nine.

Q. Now, when you got back to Victoria was there not

a great many miners who outfitted in Victoria for the Klondike regions?

A. Yes, there were some in our party outfitted there.

Q. To your knowledge a great many have outfitted there? A. From all reports they have.

Q. Was there a market for Klondike outfits in Victoria in August and September?

A. I suppose so.

Q. The outfit that you took was not perishable stuff, was it? A. Yes, sir.

Q. It was stuff calculated to last you for six months to a year? A. Yes, sir.

Q. Did you endeavor to sell that outfit to anyone in Victoria?

A. Not after I found the amount of duty I had to pay.

Q. You did not pay any duty?

A. I did not pay any duty to bring it back.

Q. Then what were the charges of \$50 and \$8?

A. Well, we have had to take and pay money out here to get out our manifests, in the first place; then when we got back from our trip we had to pay money there to get it out of the ship, and then we had to pay to get it back to Seattle, and we paid drayage, all of that would amount to \$8.00.

Q. The drayage was a small part? A. Yes, sir.

Q. Now, when did you get it back?

A. I got it back some time in September, the latter part of September received it here at Seattle.

Q. Where were you from the 9th of September when you got back to Victoria?

A. Partly in Victoria and partly here.

Q. What were you waiting for?

A. I was waiting to have my fare settled up there. As soon as I got my freight I came back here.

Q. You were not contemplating to go up to Dawson City then?

A. We were figuring if there was any chance to get there.

Q. You did not sell your outfit because you were waiting to see if the agents of the company could carry out their contract with you?      A. Yes, sir.

Q. Did you have a conversation with the alleged agents of the company you met over there?

A.

Q. You met them here after returning as well as before you went?

A.

Q. You knew that they were over here after you returned to Victoria from Comox?

A. The older McGuire, the president, was at Victoria; he came over there.

Q. You stayed at the hotel there in Victoria, then, from the 8th to the end of September?

A. No, sir, partly there and partly here between these two points, Victoria and Seattle.

Q. Did you not state in your direct examination that McFarland would pay for everything that did not amount to more than \$1.25 per day?

A. Yes, sir.

Q. Does that refresh your recollection, and did you not stay there until the 31st?

A. We are talking about the return. We put up for our expenses at Victoria and paid our own expenses here after we returned. The beginning of the trip was all paid by those people.

Q. By McFarland?

A. By the Portland Company.

Q. By McFarland?      A. Yes, sir.

Q. When you brought your outfit back here your provisions were mostly in unbroken packages?

A. They were all packed the same as they left here.

Q. What effort did you make to sell them here at Seattle?      A. I did sell them.

Q. To whom did you sell them?

A. I went down to the people I bought the goods from and returned them to them.

Q. And you lost \$50 on those groceries?

A. Not on that alone; I had hardware and medicines I lost \$50 on the whole.

Q. How much did you pay?

A. \$190, about that.

Q. And how much did you get from the various parties for it?

A. Some of it I sold to a man at the Western Hotel, some to the grocery people.

Q. How much did he pay you?

A. I think about \$50, including medicines and clothing that cost about \$85 or \$80; I returned my provisions, \$76, to Louch, Augustine & Co., and got \$60 in return for it.

Q. You did not try to sell these things, then, to other parties going to Alaska?

A. No, sir, only just as I tell you.

Q. There were other parties still going to Alaska, was there not?           A. Well, yes.

CHARLES RUFF.

Subscribed and sworn to before me this 3d day of Nov., 1897, in the presence of the attorneys of the respective parties, and said witness was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth.

[Notarial Seal.]

G. F. FAY,

Notary Public in and for said State.

TO DAWSON CITY THIS YEAR.

The S. S. "Bristol" to St. Michaels and steamer "Eugene," St. Michaels to Dawson City, Direct.



Monday, August 23.

Three-fourths of a ton of freight and baggage free with passage.

Fare—Seattle to Dawson City, \$300.

C. W. Gould, Agent, 619 First Av., Seattle.

It is agreed that the foregoing deposition may be filed in the above entitled cause and used as evidence therein at the trial without objections as to the manner of taking, but reserving objections as to relevancy, materiality, competency and the like.

Dated Nov. 4th, 1897.

JOHN C. HOGAN,  
Attorney and Proctor for Libelants.  
STRUDWICK & PETERS,  
Proctors for Claimant Geer.

[Endorsed]: Deposition of Charles Ruff. Filed this 5th day of November, 1897. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

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*In the District Court of the United States for the District of Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE" and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION COMPANY,

Respondents.

**Answer to Amended Libel.**

To the Honorable C. H. Hanford, Judge of the above-entitled court:

Joel P. Geer, claimant of the steamship "Eugene," for his separate answer to amended libel of Gaston Jacobi and Charles Ruff, reserving unto himself hereby the right to include in this his defense to said amended libel matters of law, articulates, propounds, alleges, and denies as follows:

**I.**

Answering article I of said amended libel, he admits that at the time of the filing of the original libel herein the steamship "Eugene" was at Seattle, in the State of Washington.

**II.**

Answering article II of said amended libel, he denies that at all or any of the times mentioned therein said steamship "Eugene" was owned by the said Portland and Alaska Trading and Transportation Company, or that it was operated by said company in any manner save as hereinafter set forth, and claimant alleges that he has no knowledge or information as to whether or not said Portland and Alaska Trading and Transportation Company was authorized to do business in the State of Washington ;and he denies that said company was, during said time, engaged in business as a common carrier of passengers, baggage, and freight, between the city of Seattle, Washington, and Dawson City, N. W. T., Dominion of Canada ;and he denies that during all or any of said times one E. B. McFarland was the general manager, or C. W. Gould was the agent of said steamship

“Eugene,” or that either was duly authorized and empowered to enter into any and all contracts, or any contracts whatever, on behalf of said steamship “Eugene” or of said company, for the transportation of passengers, baggage, and freight from said city of Seattle, Washington, to said Dawson City, N. W. T.

### III.

Answering article III of said amended libel, claimant denies that on or about the 11th day of August, 1897, or at any other time whatsoever, or prior or subsequent thereto, the steamship “Eugene” or its manager or agent caused it to be publicly or extensively advertised, or at all advertised, that said steamship “Eugene,” in tow of the steamship “Bristol,” would leave Seattle, Washington, for Dawson City, N. W. T., on the 23d day of August, 1897, as alleged in said amended libel, or in the advertisements attached thereto, marked respectively Exhibits “A” and “B”; and denies that the Portland and Alaska Trading and Transportation Company was the owner of said steamship “Eugene” at such time, and claimant has no knowledge or information as to the publication or circulation of said advertisements, or the connection of respondent, the Portland and Alaska Trading and Transportation Company, therewith, and he denies that any of said advertisements or matters growing out thereof constitute any part of the the alleged contract between libelants and the Portland and Alaska Trading and Transportation Company which formed the basis of said libel.

### IV.

Answering article IV of said amended libel, claimant has no knowledge or information as to the reliance, if

any, placed by libelants upon said advertisements or oral representations or promises of a like nature, or otherwise; and he denies that the same form any part of said alleged contract; and he denies that the owners of the "Eugene" made any written or oral representations or promises whatever to libelants, or otherwise; and he denies that libelant Gaston Jacobi, on or about the 19th day of August, 1897, or at any other time, made or entered into a contract with said steamer "Eugene," through her owners or otherwise, wherein or whereby said steamship "Eugene" undertook, promised, or agreed to carry libelant from said city of Seattle, Washington, to said Dawson City, N. W. T., via the port of St. Michaels.

Denies that said steamship "Eugene," through her owners, manager, or agent, promised or agreed that said steamship "Eugene" would leave Seattle, Washington, on the 24th day of August, 1897, or at any other date or time, or that she would reach said Dawson City not later than September 15th, 1897, or at any other date or time whatsoever; and denies that among other things it was agreed by or between said steamship "Eugene," through her owners, agents, or manager, and said libelant, that said steamship "Eugene" would leave the said city of Seattle, Washington, in tow of said steamship "Bristol," or would be towed by said "Bristol" from Seattle to said port of St. Michaels, Alaska, or that she agreed to continue said voyage up the Yukon river to Dawson City, or that she would reach there on September 15th, as aforesaid, or that in consideration of said alleged promises, or any promises, libelant engaged passage on said steamship "Eugene" from Seattle, Washington, to said Dawson City, or paid therefor passage money amounting to \$300.00, or any sum whatever, for the conveyance of himself, his baggage, or freight, or that he received tickets therefor; and denies that libel-

ant ever engaged passage on said steamship "Eugene" from Seattle, Washington, to Dawson City at all; and claimant hereby calls upon libelant to produce, for inspection of this claimant and respondent, the passage tickets alleged as so received.

## V.

Answering article V of said amended libel, claimant denies that there was any contract whatsoever as alleged therein, or that on or about the 24th day of August, 1897, or at any other time, said steamship "Eugene" entered upon the performance of said alleged contract, or that she left Seattle in tow of said steamship "Bristol," or that she undertook to carry libelant or other passengers over the whole of said voyage, or any part thereof, or that she proceeded upon said alleged voyage for the distance of upwards of six or seven hundred miles, or any other distance, up to the coast of Alaska, or that she abandoned said voyage, or refused to proceed further thereon or that any such alleged contract existed between said steamship "Eugene" and libelant, or that she failed or neglected to keep the same.

## VI.

Answering article VI, claimant denies that libelant, on the faith of said alleged representations or agreements, went to a large or any expense to prepare himself for said voyage or purchased an outfit therefor at an expense of \$200.00, or at any expense, or that by the failure on the part of said ship to keep said alleged agreement it was rendered valueless to him; and claimant denies that libelant is entitled to recover for said alleged breach damages from anyone for loss of time or hindrance in carrying on his business or work, for the reason

that the same are too remote and speculative, and furnish no basis for a recovery.

Further answering the libel of said Gaston Jacobi, claimant alleges:

That prior to the 31st day of July, 1897, Francis B. Jones and Joel P. Geer, being part owners of the steamship "Eugene," then belonging to the port of Portland, State and District of Oregon, entered into a contract and agreement with respondent herein, the Portland and Alaska Trading and Transportation Company, in words as follows, to-wit:

This agreement, made this 31st day of July, 1897, by and between Francis B. Jones and Joel P. Geer, of the city of Portland, Multnomah County, Oregon, and the Portland and Alaska Trading and Transportation Company of the same place, witnesseth:

That whereas, the said Francis B. Jones and Joel P. Geer are desirous of placing the steamer "Eugene," now plying as a passenger boat upon the Willamette river, upon the Yukon river, in the territory of Alaska and the Northwest Territory of Great Britain, adjoining thereto, for the purpose of running the said boat upon the said river;

And whereas, the Portland and Alaska Trading and Transportation Company are desirous of using the said boat for the purpose of transporting freight up the Yukon river to Circle City or Dawson.

Now, therefore, in consideration of the premises, and the further consideration of one dollar in hand paid the said Francis B. Jones and Joel P. Geer, have, and do hereby agree to and with the said Portland and Alaska Trading and Transportation Company to turn over the possession of the said steamer "Eugene" to the said Portland and Alaska Trading and Transportation Company, for the purposes aforesaid, of taking the same to and up the Yukon river to such point of the same as the said

Portland and Alaska Trading and Transportation Company may desire, and when the said steamer "Eugene" has arrived at the terminal point decided upon by the said Portland and Alaska Trading and Transportation Company, upon the said river Yukon, and hath discharged her cargo within a reasonable time under existing conditions, the said Portland and Alaska Trading and Transportation Company shall turn over the said steamer to the Willamette and Columbia River Towing Company and Joel P. Geer, and to there enter a joint traffic interchange between Portland, Or., and Dawson City, Alaska, for the ensuing year, on a basis of 40 per cent to the steamer "Eugene," and 60 per cent to the Portland and Alaska Trading and Transportation Co. of through rates, details of which to be entered into before sailing from Portland, without charge, cost, or expense to them. But it is expressly understood that the said Portland and Alaska Trading and Transportation Company do not hereby agree to transfer said steamer safely to the said Yukon, but only to make the endeavor so to do, using all proper precaution and care in said effort. But if said steamer "Eugene" shall fail to reach the Yukon river or said point of destination by reason of any infirmity in the character of the steamer, but without negligence upon the part of the agents of the said Portland and Alaska Trading and Transportation Company, the latter shall not be responsible in any way for the loss of the said steamer or its failure to arrive at the proposed terminal destination.

And the said Portland and Alaska Trading and Transportation Company, in consideration of the premises, and that the said Francis B. Jones and Joel P. Geer have put the said steamer "Eugene" in to their possession for the aforesaid purposes, hath and do hereby agree to put the said boat at their own proper cost, charge and expense, into such condition as will render it, as far as practicable seaworthy and safe to proceed upon the high seas

to the said Yukon river. The said repairs and renewals necessary to be made to and upon the said steamer "Eugene" to be done at once, and to be satisfactory to the said Francis B. Jones and Joel P. Geer before the said steamer leaves the city of Portland.

In testimony whereof, the said Francis B. Jones and Joel P. Geer, and the Portland and Alaska Trading and Transportation Company, by its president, have hereunto set their hands and seals, and the seal of the said company.

F. B. JONES.

JOEL P. GEER.

H. P. McGUIRE, For the Portland and Alaska Trading and Transportation Co.

That thereafter, and on the 7th day of August, 1897, the Willamette and Columbia River Towing Company and said Joel P. Geer, the then owners of said Steamship "Eugene," then lying in the port of Portland, Oregon, and said respondent, the Portland and Alaska Trading and Transportation Company, entered into a contract relative to said steamship "Eugene," in words as follows, to-wit:

This agreement, made this 7th day of August, 1897, by and between Willamette and Columbia River Towing Company, a corporation, and Joel P. Geer, of the city of Portland, Oregon, and the Portland and Alaska Trading and Transportation Company of the same place, witnesseth:

That whereas, the said Willamette and Columbia River Towing Company and Joel P. Geer are desirous of placing the steamer "Eugene," now plying as a passenger boat upon the Willamette river, upon the Yukon river, in the territory of Alaska and the Northwest Territory of Great Britain, adjoining thereto, for the purpose of running the said boat upon the said river;

And whereas, the Portland and Alaska Trading and



Transportation Company are desirous of using the said boat for the purpose of transporting freight up the Yukon river to Circle City or Dawson City, Northwest Territory.

Now, therefore, in consideration of the premises, and of the repairs, improvements, and money expended by the Portland and Alaska Trading and Transportation Company upon said steamer "Eugene" in preparing the said steamer for the sea voyage from Portland to St. Michaels, Alaska, and the further consideration of one dollar in hand paid, the said Willamette and Columbia River Towing Company and Joel P. Geer have, and do hereby agree to and with the said Portland and Alaska Trading and Transportation Company to turn over, and do hereby turn over, the possession of the said steamer "Eugene" to the said Portland and Alaska Trading and Transportation Company for the purposes aforesaid, of taking the same to and up the Yukon river to such point of the same as the said Portland and Alaska Trading and Transportation Company may desire, and when the said steamer "Eugene" has arrived at the terminal point decided upon by the said Portland and Alaska Trading and Transportation Company upon the said river Yukon, and hath discharged her cargo, the said Portland and Alaska Trading and Transportation Company shall turn over to the said Willamette and Columbia River Towing Company and Joel P. Geer, without expense to them so far as transporting said steamer "Eugene" to said Dawson City, Alaska. But it is expressly understood that the said Portland and Alaska Trading and Transportation Company do not hereby agree to transfer said steamer safely to the said Yukon, but only to make the endeavor so to do, using all proper precaution and care in said effort. But if the said steamer "Eugene" shall fail to reach the Yukon river or said point of destination by reason of any infirmity in the character of the steamer, but without negligence upon the part of the agents

of the said Portland and Alaska Trading and Transportation Company, the latter shall not be responsible in any way for the loss of the said steamer or its failure to arrive at the proposed terminal destination.

And the said Portland and Alaska Trading and Transportation Company, in consideration of the premises, and that the said Willamette and Columbia River Towing Company and Joel P. Geer have put the said steamer "Eugene" into their possession for the aforesaid purposes, hath and do hereby agree to put the said boat at their own proper cost, charge, and expense into such condition as will render it, as far as practicable, seaworthy and safe to proceed upon the high seas to the said Yukon river. In consideration of the money expended by the said Portland and Alaska Trading and Transportation Company in the preparation, repairing, and improvement of the said steamer "Eugene" at the city of Portland, Oregon, so far as to make her seaworthy, the Willamette and Columbia River Towing Company and Joel P. Geer hereby enter into an agreement with and hereby bind themselves to give the passengers and freight offered them by the said Portland and Alaska Trading and Transportation Company at St. Michaels, or any other point agreed upon by them at or near the mouth of the Yukon river, the preference of all other passengers and freight, and hereby enter into a joint traffic agreement, for the term of one year from the time said steamer "Eugene" reaches Dawson City, with the Portland and Alaska Trading and Transportation Company for the interchange of passengers and freight between Portland Oregon, and Dawson City, Northwest Territory, and other points upon the Yukon river reached by said steamer "Eugene," upon the basis of forty (40) per cent of the gross receipts received from all interchangeable passengers and freight to Willamette and Columbia River Towing Company and Joel P. Geer, and sixty (60) per

cent of said gross receipts to the Portland and Alaska Trading and Transportation Company; the feeding and revenue derived from the passengers, and the expense of providing for them upon said steamer "Eugene" is not to be included herein.

In testimony whereof, the said Willamette and Columbia River Towing Company and Joel P. Geer, and the Portland and Alaska Trading and Transportation Company, by its president, have hereunto set their hands and seals and the seal of the said company.

WILLAMETTE & COLUMBIA R. T. CO. [Seal]  
By F. B. JONES, President. [Seal]

In the presence of:

Alex. Sweek.

E. B. McFarland.

WILLAMETTE AND COLUMBIA RIVER TOWING  
CO. [Seal]

[Seal of Portland & Alaska Trading & Transportation Co.] By JOEL P. GEER. [Seal]  
M. S. JONES, Secretary.

PORTLAND AND ALASKA TRADING AND TRANSPORTATION COMPANY.

[Seal of Willamette and Columbia River Towing Co.] By W. W. McGUIRE, Sec.

That in pursuance of said contracts, and in conformity therewith, said owners of said steamship "Eugene" turned the possession of her over unto the said Portland and Alaska Trading and Transportation Company for the purposes thereof, and not otherwise, and said Portland and Alaska Trading and Transportation Company proceeded to refit said steamer "Eugene" in accordance with the provisions of said contracts; and claimant avers that the said "Eugene" was not an ocean going vessel, but a light draught river steamboat, then plying upon the waters of the Willamette river in the State of Oregon, and was well known as such both in the community of Portland and Seattle, and that her use upon the seas or any use as carrier of freight, passengers, or baggage was

never contemplated between her owners and the said Portland and Alaska Trading and Transportation Company, and that the delivery of said steamboat "Eugene" by her said owners to said Portland and Alaska Trading and Transportation Company, of Portland, Oregon, was in accordance with said contracts and not otherwise, and for the purpose of fitting up said vessel and bringing the same from Portland, Oregon, to St. Michaels, Alaska, between which said latter point and Dawson City the owners of the "Eugene" and said Portland and Alaska Trading and Transportation Company desired and agreed to operate said boat. That thereafter, and before the departure of said boat from Portland, Oregon, the Yukon Transportation Company of Portland, Oregon a corporation organized and existing under the laws of the State of Oregon, by purchases from said Willamette and Columbia River Towing Company and said Joel P. Geer, became the owner of said steamship "Eugene," and is the owner thereof, and claimant is master and bailee thereof, on behalf of said owners.

That thereafter said steamboat "Eugene," by her own power, proceeded from Portland to Astoria, in the State of Oregon, and from said latter point was towed by the tugboat "Escort" to Port Angeles, in the State of Washington, and from said last-named point proceeded with her own power to Comox, British Columbia, and at or about said last-named point was taken in tow by the steamship "Bristol," such towage being for the purposes mentioned in the said contracts of July 31st, 1897, and of August 7, 1897, and not otherwise; and when said steamboat "Eugene" had proceeded as aforesaid a distance of 600 or 700 miles from Comox, British Columbia, heavy weather was encountered, and said steamboat "Eugene" began to strain heavily and spring leaks, and was compelled to and did return to Port Townsend in the State of Washington, and thence proceeded to Seattle,

Washington, for repairs, at which said latter point she was lying at the time of her attachment at the instance of libelants, and this claimant alleges that the libelant Gaston Jacobi purchased from F. C. Davidge & Co., at Seattle, Washington, passage upon the steamship "Bristol," from Victoria, B. C., to St. Michaels, Alaska, thence operated by said F. C. Davidge & Co. under time charter, and thereafter embarked upon said steamship "Bristol" together with his freight and baggage, and at the same time purchased from the Portland and Alaska Trading and Transportation Company a ticket from St. Michaels, Alaska, to Dawson City, N. W. T., which this claimant is informed and believes, and therefore so alleges, read as follows:

No. 6. Portland and Alaska Trading and Transportation Co.

Good for one passage from St. Michaels to Dawson City, N. W. T., via S. S. "Eugene." Name, Gaston Jacobi.

E. B. McFARLAND, Gen. Manager.

And claimant alleges that neither libelant Jacobi nor his baggage or freight were ever on board the steamer "Eugene," and that the voyage of said vessel contemplated under said contract evidenced by said ticket was to begin at St. Michaels, Alaska, and end at Dawson City, N. W. T.; and that neither said libelant nor said steamboat "Eugene" ever arrived at St. Michaels, and that said contract was wholly executory.

And claimant further avers that by reason of the fact that the steamboat "Eugene" was not a seagoing vessel, and was commonly and generally known as such, neither said Portland and Alaska Trading and Transportation Company, nor owners of said steamboat "Eugene," nor claimant, ever promised or agreed that said vessel could in fact undergo the trip to St. Michaels and there place herself in readiness to proceed up the Yukon river and

from St. Michaels to Dawson City; and claimant alleges that no absolute representations or warranty that she would arrive at St. Michaels on or before September 15, 1897, or at any other time, were made by said Portland and Alaska Trading and Transportation Company to libelant, but only that an attempt would be made to bring her to said point; and claimant avers that said attempt was so made, and by stress of weather said boat was unable to proceed to St. Michaels, and was obliged to abandon the attempt, and return to Port Townsend.

And claimant further avers that libelant, prior to the institution of this suit, released said steamer "Bristol" and said F. C. Davidge & Co. from his contract with them and said steamship for the conveyance of himself from Victoria to St. Michaels, and that the conveyance of libelant contemplated under said ticket on the steamboat "Eugene" was from St. Michaels, Alaska, to Dawson City, and not otherwise; and that neither the said libelant nor said steamer "Eugene" ever arrived at the port of St. Michaels, at which said point said voyage was to commence; and claimant further avers that no part of the passage money alleged as paid was ever paid to or received by the Yukon Transportation Company of Portland, Oregon, owner of the "Eugene," or this claimant, as her manager.

And for answer to the cause set up by libelant Charles Ruff, claimant articulates, propounds, alleges, and denies as follows:

### I.

He adopts as a part of his said defense to said second cause of action paragraphs I, II, and III of his answer to the libel and claim of Gaston Jacobi.

### II.

Answering article IV of said amended libel, claimant

has no knowledge or information as to the reliance, if any, placed by libelants upon said advertisements or oral representations or promises of a like nature, or otherwise, and he denies that the same form any part of said contract; and he denies that the owners of the "Eugene" made any written or oral representations or promises whatever to libelants, or otherwise; and he denies that libelant Charles Ruff, on or about the 19th day of August, 1897, or at any other time, made or entered into a contract with said steamship "Eugene," through her owners or otherwise, wherein or whereby said steamship "Eugene" undertook, promised, or agreed to carry libelant from said city of Seattle, Washington, to said Dawson City, N. W. T., via the port of St. Michaels.

Denies that said steamship "Eugene," through her owners, manager, or agent, promised or agreed that said steamship "Eugene" would leave Seattle, Washington, on the 24th day of Aug., 1897, or at any other date or time, or that she would reach said Dawson City not later than September 15, 1897, or at any other date or time whatsoever; and denies that among other things it was agreed by or between said steamship "Eugene," through her owners, agents, or manager, and said libelant, that said steamship "Eugene" would leave the said city of Seattle, Washington, in tow of said steamship "Bristol," or would be towed by said "Bristol" from Seattle to said port of St. Michaels, Alaska, or that she agreed to continue said voyage up the Yukon river to Dawson City, or that she would reach there on September 15, 1897, as aforesaid, or that in consideration of said alleged promises, or any promises, libelant engaged passage on said steamship "Eugene" from Seattle, Washington, to said Dawson City, or paid therefor passage money amounting to \$300.00, or any sum whatever, for the conveyance of himself, his baggage, or freight, or that he received tickets therefor; and denies that libel-

ant ever engaged passage on said steamer "Eugene" from Seattle, Washington, to Dawson City at all; and claimant hereby calls upon libelant to produce for inspection of this claimant and respondent the passage tickets alleged as so received.

### III.

Answering article V of said amended libel, claimant denies that there was any contract whatsoever as alleged therein, or that on or about the 24th day of August, 1897, or at any other time, said steamship "Eugene" entered upon the performance of said alleged contract, or that she left Seattle in tow of said steamship "Bristol," or that she undertook to carry libelant or other passengers over the whole of said voyage or any part thereof, or that she proceeded upon said alleged voyage for the distance of upwards of six hundred or seven hundred miles, or any other distance, up to the coast of Alaska; or that she abandoned said voyage or refused to proceed further thereon, or that any such alleged contract existed between said steamship "Eugene" and libelants, or that she failed or neglected to keep the same.

### VI.

Answering article VI, claimant denies that libelant, on the faith of said representations or agreements, went to a large or any expense to prepare himself for said voyage, or purchased an outfit therefor at an expense of \$200.00 or at any expense, or that by the failure on the part of said ship to keep said alleged agreement it was rendered valueless to him; and claimant denies that libelant is entitled to recover for said alleged breach damages from anyone for loss of time or hinderance in carrying on his business or work, for the reason that the same are too remote and speculative, and furnish no basis for a recovery.



Further answering the libel of said Charles Ruff, claimant alleges:

That prior to the 31st day of July, 1897, Francis B. Jones and Joel P. Geer, being part owners of the steamship "Eugene," then belonging to the port of Portland, State and District of Oregon, entered into a contract and agreement with respondent herein, the Portland and Alaska Trading and Transportation Company, in words as follows, to-wit:

This agreement, made this 31st day of July, 1897, by and between Francis B. Jones and Joel P. Geer, of the city of Portland, Multnomah county, Oregon, and the Portland and Alaska Trading and Transportation Company of the same place, witnesseth:

That whereas, the said Francis B. Jones and Joel P. Geer are desirous of placing the steamer "Eugene," now plying as a passenger boat upon the Willamette river, upon the Yukon river in the territory of Alaska, and the Northwest Territory of Great Britain, adjoining thereto, for the purpose of running the said boat upon the said river;

And whereas, the Portland and Alaska Trading and Transportation Company are desirous of using the said boat for the purpose of transporting freight up the Yukon river to Circle City or Dawson.

Now, therefore, in consideration of the premises, and the further consideration of one dollar in hand paid, said Francis B. Jones and Joel P. Geer have and do hereby agree to and with the said Portland and Alaska Trading and Transportation Company to turn over the possession of the said steamer "Eugene" to the said Portland and Alaska Trading and Transportation Company for the purposes aforesaid, of taking the same to and up the Yukon river to such point of the same as the said Portland and Alaska Trading and Transportation Company may desire, and when the said steamer "Eugene" has ar-

rived at the terminal point decided upon by the said Portland and Alaska Trading and Transportation Company, upon the said river Yukon, and hath discharged her cargo within a reasonable time under existing conditions, the said Portland and Alaska Trading and Transportation Company shall turn over the said steamer to the Willamette and Columbia River Towing Company and Joel P. Geer, and to there enter a joint traffic interchange between Portland, Or., and Dawson City, Alaska, for the ensuing year, on a basis of 40 per cent to the steamer "Eugene," and 60 per cent to the Portland and Alaska Trading and Transportation Company of through rates, details of which to be entered into before sailing from Portland, without charge, cost, or expense to them. But it is expressly understood that the said Portland and Alaska Trading and Transportation Company do not hereby agree to transfer said steamer safely to the said Yukon, but only to make the endeavor so to do, using all proper precaution and care in said effort. But if said steamer "Eugene" shall fail to reach the Yukon river or said point of destination by reason of any infirmity in the character of the steamer, but without negligence upon the part of the agents of the said Portland and Alaska Trading and Transportation Company, the latter shall not be responsible in any way for the loss of the said steamer or its failure to arrive at the proposed terminal destination.

And the said Portland and Alaska Trading and Transportation Company, in consideration of the premises, and that the said Francis B. Jones and Joel P. Geer have put the said steamer "Eugene" into their possession for the aforesaid purposes, hath and do hereby agree to put the said boat at their own proper cost, charge, and expense into such condition as will render it, as far as practicable, seaworthy and safe to proceed upon the high seas to the said Yukon river. The said repairs and renewals necessary to be made to and upon the said

steamer "Eugene" to be done at once, and to be satisfactory to the said Francis B. Jones and Joel P. Geer before the said steamer leaves the city of Portland.

In testimony whereof, the said Francis B. Jones and Joel P. Geer, and the Portland and Alaska Trading and Transportation Company, by its president, have hereunto set their hands and seals, and the seal of the said company.

F. B. JONES.

JOEL P. GEER.

H. P. McGUIRE,

For the Portland and Alaska Trading and Transportation Co.

That thereafter, and on the 7th day of August, 1897, the Willamette and Columbia River Towing Company and said Joel P. Geer, the then owner of said steamship "Eugene," then lying in the port of Portland, Oregon, and said respondent, the Portland and Alaska Trading and Transportation Company, entered into a contract relative to said steamship "Eugene," in words as follows, to-wit:

This agreement, made this 7th day of August, 1897, by and between Willamette and Columbia River Towing Company, a corporation, and Joel P. Geer, of the city of Portland, Oregon, and the Portland and Alaska Trading and Transportation Company of the same place, witnesseth:

That whereas, the said Willamette and Columbia River Towing Company and Joel P. Geer are desirous of placing the steamer "Eugene," now plying as a passenger boat upon the Willamette river, upon the Yukon river, in the territory of Alaska and the Northwest Territory of Great Britian, adjoining thereto, for the purpose of running the said boat upon the said river;

And whereas, the Portland and Alaska Trading and Transportation Company are desirous of using the said

boat for the purpose of transporting freight up the Yukon river to Circle City or Dawson City, Northwest Territory;

Now, therefore, in consideration of the premises, and of the repairs, improvements, and money expended by the Portland and Alaska Trading and Transportation Company upon said steamer "Eugene" in preparing the said steamer for the sea voyage from Portland to St. Michaels, Alaska, and the further consideration of one dollar in hand paid, the said Willamette and Columbia River Towing Company and Joel P. Geer, have, and do hereby agree to and with the said Portland and Alaska Trading and Transportation Company to turn over, and do hereby turn over, the possession of the said steamer "Eugene" to the said Portland and Alaska Trading and Transportation Company for the purposes aforesaid, of taking the same to and up the Yukon river to such point of the same as the said Portland and Alaska Trading and Transportation Company may desire, and when the said steamer "Eugene" has arrived at the terminal point decided upon by the said Portland and Alaska Trading and Transportation Company upon the said river Yukon, and hath discharged her cargo, the said Portland and Alaska Trading and Transportation Company shall turn over to the said Willamette and Columbia River Towing Company and Joel P. Geer, without expense to them, so far as transporting said steamer "Eugene" to said Dawson City, Alaska. But it is expressly understood that the said Portland and Alaska Trading and Transportation Company do not hereby agree to transfer said steamer safely to the said Yukon, but only to make the endeavor so to do, using all proper precaution and care in said effort. But if the said steamer "Eugene" shall fail to reach the Yukon river or said point of destination by reason of any infirmity in the character of the steamer, but without negligence upon the part of the

agents of the said Portland and Alaska Trading and Transportation Company, the latter shall not be responsible in any way for the loss of the said steamer or its failure to arrive at the proposed terminal destination.

And the said Portland and Alaska Trading and Transportation Company, in consideration of the premises, and that the said Willamette and Columbia River Towing Company and Joel P. Geer have put the said steamer "Eugene" into their possession for the aforesaid purposes, hath and do hereby agree to put the said boat at their own cost, charge, and expense into such condition as will render it, as far as practicable, seaworthy and safe to proceed upon the high seas to the Yukon river. In consideration of the money expended by the said Portland and Alaska Trading and Transportation Company in the preparation, repairing, and improvement of the said steamer "Eugene" at the city of Portland, Oregon, so as to make her seaworthy, the Willamette and Columbia River Towing Company and Joel P. Geer hereby enter into an agreement with and hereby bind themselves to give the passengers and freight offered them by the said Portland and Alaska Trading and Transportation Company at St. Michaels, or any other point agreed upon by them at or near the mouth of the said Yukon river, the preference of all other passengers and freight, and hereby enter into a joint traffic agreement for the term of one year from the time said steamer "Eugene" reaches Dawson City, with the Portland and Alaska Trading and Transportation Company, for the interchange of passengers and freight between Portland, Oregon, and Dawson City, Northwest Territory, and other points upon the Yukon river reached by said steamer "Eugene," upon the basis of forty (40) per cent of the gross receipts received from all interchangeable passengers and freight to Willamette and Columbia River Towing Company and Joel P. Geer, and sixty (60) per cent of

said gross receipts to the Portland and Alaska Trading and Transportation Company, the feeding and revenues derived from the passengers, and the expenses of providing for them upon said steamer "Eugene," is not to be included herein.

In testimony whereof, the said Willamette and Columbia River Towing Company and Joel P. Geer, and the Portland and Alaska Trading and Transportation Company, by its president, have hereunto set their hands and seals and the seal of the said company.

WILLAMETTE AND COLUMBIA R. T. CO. [Seal]

By F. B. JONES, [Seal]

President.

In presence of:

Alex Sweek.

E. B. McFarland.

WILLAMETTE AND COLUMBIA RIVER TOWING  
CO.

By JOEL P. GEER.

[Seal]

[Seal of Portland and Alaska Trading and Transportation Co.] M. S. JONES, Secretary.

PORTLAND AND ALASKA TRADING AND TRANSPORTATION COMPANY.

[Seal of Willamette and Columbia River Towing Co.] By W. W. McGUIRE, Sec.

That in pursuance of said contracts, and in conformity therewith, said owners of said steamship "Eugene" turned the possession of her over unto the said Portland and Alaska Trading and Transportation Company for the purposes thereof, and not otherwise, and said Portland and Alaska Trading and Transportation Company proceeded to refit said steamer "Eugene" in accordance with the provisions of said contracts; and claimant avers that the said "Eugene" was not an ocean going vessel, but a light draught river steamboat, then plying upon the waters of the Willamette river in the State of Oregon, and generally known as such in the community of Port-

land and Seattle, and that her use upon the seas or any use as carrier of freight, passengers, or baggage was never contemplated between her owners and the said Portland and Alaska Trading and Transportation Company, and that the delivery of said steamboat "Eugene" by her said owners to said Portland and Alaska Trading and Transportation Company, of Portland, Oregon, was in accordance with said contracts and not otherwise, and for the purpose of fitting up said vessel and bring the same from Portland, Oregon, to St. Michaels, Alaska, between which said latter point and Dawson City the owners of the "Eugene" and said Portland and Alaska Trading and Transportation Company desired and agreed to operate said boat. That thereafter, and before the departure of said boat from Portland, Oregon, the Yukon Transportation Company, of Portland, Oregon, a corporation organized and existing under the laws of the State of Oregon, by purchases from said Willamette and Columbia River Towing Company and said Joel P. Geer, became the owner of said steamship "Eugene," and is the owner thereof, and claimant is master and bailee thereof, on behalf of said owners.

That thereafter said steamboat "Eugene," by her own power, proceeded from Portland to Astoria, in the State of Oregon, and from said latter point was towed by the tugboat "Escort" to Port Angeles, in the State of Washington, and from said last-named point proceeded with her own power to Comox, British Columbia, and at or about said last-named point was taken in tow by the steamship "Bristol," such towage being for the purposes mentioned in the said contract of July 31st, 1897, and of August 7, 1897, and not otherwise; and when said steamboat "Eugene" had proceeded as aforesaid a distance of 600 or 700 miles from Comox, British Columbia, heavy weather was encountered, and said steamboat "Eugene" began to strain heavily and spring leaks, and was com-

pelled to, and did, return to Port Townsend in the State of Washington, and thence proceeded to Seattle, Washington, for repairs, at which said latter point she was lying at the time of her attachment at the instance of libelants, and this claimant alleges that the libelant Gaston Jacobi purchased from F. C. Davidge & Co., at Seattle, Washington, passage upon the steamer "Bristol," then operated by said F. C. Davidge & Co. under time charter, from Victoria, B. C., to St. Michaels, Alaska, and thereafter embarked upon said steamship "Bristol," together with his freight and baggage, and at the same time purchased from the Portland and Alaska Trading and Transportation Company a ticket from St. Michaels, Alaska, to Dawson City, N. W. T., which this claimant is informed and believes, and therefore so alleges, read as follows:

No. 6. Portland and Alaska Trading and Transportation Co.

Good for one passage, from St. Michaels to Dawson City, N. W. T., via S. S. "Eugene." Name, Gaston Jacobi.

E. B. McFARLAND, Gen. Manager.

Signed, E. B. McFarland, General Manager.

And claimant alleges that neither libelant Jacobi nor his baggage or freight were ever on board the steamer "Eugene," and that the voyage of said vessel contemplated under said contract evidenced by said ticket was to begin at St. Michaels, Alaska, and end at Dawson City, N. W. T.; and that neither said libelant nor said steamboat "Eugene" ever arrived at St. Michaels, and that said contract was wholly executory.

And claimant further avers that by reason of the fact that the steamboat "Eugene" was not a seagoing vessel, and was commonly and generally known as such, neither said Portland and Alaska Trading and Transportation Company nor the owners of said steamboat "Eugene," nor claimant, ever promised or agreed that said vessel



could in fact undergo the trip to St. Michaels, and there place herself in readiness to proceed up the Yukon river and from St. Michaels to Dawson City; and claimant alleges that no absolute representations or warranty that she would arrive at St. Michaels on or before September 15, 1897, or at any other time, were made by said Portland and Alaska Trading and Transportation Company to libelant, but only that an attempt would be made to bring her to said point; and claimant avers that said attempt was so made, and by stress of weather said boat was unable to proceed to St. Michaels, and was obliged to abandon the attempt and return to Port Townsend.

And claimant further avers that libelant, prior to the institution of this suit, released said steamer "Bristol" and said F. C. Davidge & Co. from his contract with them and said steamship for the conveyance of himself from Victoria to St. Michaels, and that the conveyance of libelant contemplated under said ticket on the steamboat "Eugene" was from St. Michaels, Alaska, to Dawson City, and not otherwise; and that neither the said libelant nor said steamer "Eugene" ever arrived at the port of St. Michaels, at which said point said voyage was to commence; and claimant further avers that no part of the passage money alleged as paid was ever paid to or received by the Yukon Transportation Company, owner of the "Eugene," or this claimant, as her manager.

Wherefore, having fully answered unto the said libels of Gaston Jacobi and Charles Ruff, claimant prays that the same may be dismissed and possession of the steamship "Eugene" surrendered to claimant; and that he may recover of and from libelants and their sureties his costs and disbursements and expenses herein.

**STRUDWICK & PETERS,**

**WILLIAMS, WOOD & LINTHICUM,**

Proctors for Claimant.

United States of America,	) ss.
District of Washington,	
State of Washington,	
County of King,	

I, Joel P. Geer, being first duly sworn, say that I am the above-named claimant, and that the above and foregoing answer is true, as I verily believe.

JOEL P. GEER.

Subscribed and sworn to before me this 4 day of November, 1897.

W. A. PETERS,  
Notary Public in and for Washington, Residing at

Due service of the within answer by certified copy, as prescribed by law, is hereby admitted, at Seattle, Wn., Nov. 4, 1897.

JOHN C. HOGAN,  
Proctors for Libelants Ruff and Jacobi.

[Endorsed]: Answer of Joel P. Geer, claimant. Filed Nov. 5, 1897. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE" et  
al.,

Respondents.

And JOEL P. GEER,

Claimant.

**Notice to Set Cause for Trial.**

To the above-named Claimant, Joel P. Geer, and to  
Strudwick & Peters and Williams, Wood and Linthi-  
cum, his Attorneys and Proctors:

Take notice that at the courtroom of the above-named  
court, in the city of Seattle, Wash., on the 6th day of  
Nov., 1897, at the hour of 10 o'clock A. M. of said day, or  
as soon thereafter as counsel can be heard, the libelants,  
in the above action will apply to the above-named court  
to set down the said cause for trial upon the issues there-  
in, and for an order in said cause referring the same to a  
commissioner or master of said court, to take down the  
testimony therein and to report the same to the Court.

Dated Nov. 5th, 1897.

JOHN C. HOGAN,

Attorney and Proctor for Libelants.

Service of copy admitted this 5th day of Nov., 1897.

STRUDWICK & PETERS,

Proctors for Claimant.

[Endorsed]: Notice to set for trial. Filed Nov. 5, 1897  
In the U. S. District Court. R. M. Hopkins, Clerk. By A.  
N. Moore, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE,"  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION CO.,

Respondents.

### **Order of Reference.**

The above-entitled action coming on to be heard upon the motion of the libelants therein for an order of reference in said cause to take the testimony and evidence therein and report the same to the Court, and the parties, by their respective attorneys, being present in court and heard, and the Court being fully advised,

It is ordered that said cause be, and the same hereby is, referred to A. C. Bowman, a commissioner of this court, who is hereby authorized and directed to take the testimony and evidence in this cause upon the issues therein, and report the same to this Court with due diligence.

Dated Nov. 6, 1897.

C. H. HANFORD, Judge.

[Endorsed]: Order of Reference. Filed Nov. 6, 1897.  
In the U. S. District Court. R. M. Hopkins, Clerk. By  
A. N. Moore, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE,"  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTA-  
TION CO.,

Respondents.

### **Replication to Claim and Answer of Joel P. Geer**

To the Hon. C. H. Hanford, Judge of the above-named  
Court:

The replication of Gaston Jacobi and Charles Ruff, li-  
belants to the claim and answer of Joel P. Geer, claimant  
and respondent, alleges, that they will aver, maintain,  
and prove their libel to be true, certain, and sufficient;  
and that the said claim and answer of said claimant and  
respondent is uncertain, untrue, and insufficient.

That as to whether or not, on or prior to the 31st day of  
July, 1897, Francis B. Jones and Joel P. Geer entered in-  
to a contract or agreement with the respondent, the  
Portland and Alaska Trading and Transportation Co., as  
set out on pages 5, 6, and 7, and 17, 18, and 19 of the said  
answer and claim, these libelants have no knowledge or  
information sufficient to form a belief, and therefore  
they deny the same; and they deny that there-  
after on the 7th day of August, 1897, or at any  
other time, the Willamette and Columbia River

Towing Company and Joel P. Geer were the owners of the said steamship "Eugene," or that on said date, or at any other time, they entered into the contract with the said respondent set out on pages 8, 9, and 10, and 19, 20, 21, and 22 of said answer and claim; these libelants deny that thereafter, and before the departure of said steamship "Eugene" from Portland, or at any other time, the claimant, the Yukon Transportation Company, by purchase from the Willamette River Towing Company and Joel P. Geer, became the owner of said steamship "Eugene," or in any other manner became such owner, and deny that said company is such owner, and deny that said Joel P. Geer is the master or bailee thereof on behalf of the owners.

That they admit that the said "Eugene" was towed from Astoria, Oregon, to Port Angeles, Washington, by the tugboat "Escort," but deny that the said "Eugene" proceeded by her own power to Comox, B. C., but allege the truth to be that said "Eugene" was at all times, after leaving Victoria, B. C., towed by the steamship "Bristol," mentioned in the libel herein; that they deny that heavy weather was encountered after proceeding a distance of 600 or 70 miles from Comox, B. C., or at any other time in said voyage, or that by reason thereof the said "Eugene" sprung a leak, but allege the truth to be that the said "Eugene," contrary to the representations made to libelants and to the contract in her behalf made with libelants, was unseaworthy, and wholly unfit to proceed upon voyage by reason of her infirm, unsafe, and broken condition.

That libelants deny that they purchased tickets of F. C. Davidge & Co., of Seattle, Washington, as alleged on pages 12 and 24 of said answer and claim, but allege that the passage money was paid by them to C. W. Gould & Co., agents of the said respondents, the Portland and Alaska Trading and Transportation Company, and of

said "Eugene," for a continuous voyage from Seattle, Washington, to said Dawson City, N. W. T.

That replying to the allegations in the said answer on the bottom of page 13 and the bottom of page 25, wherein it is alleged that libelants released the steamship "Bristol," libelants deny the same and each and every allegation thereof, and allege the truth to be that they signed a certain paper exhibited to them on board the said "Bristol" at sea, but that the signing of said paper was done under duress, and by the threats and compulsion of the master of the said "Bristol," that if they would not sign the same said master would land libelants on the coast of Alaska, and leave them there to pass the winter without any suitable shelter, fuel, or provisions, so that their lives would be imperiled by exposure in that severe climate, without money, or means if they had money to leave said place, and said paper was signed after the said "Eugene" had abandoned and given up said voyage, and rendered it impossible for libelants to get to Dawson City that year, and libelants protested against the signing of the same at all times, and when the same was signed, the said E. B. McFarland, manager of the said "Eugene," and Captain Lewis, the master thereof, were both present and advised libelants to sign the same, assuring libelants that so signed under duress and against their protest, said paper was void and of no validity, and said McFarland and Lewis representing to libelants that if they would sign the same, the said "Eugene" would assume all responsibility for the failure of said voyage, and would be liable and responsible to libelants for a return of their passage money and the damages for such failure, and libelants say that they never voluntarily released the said "Bristol" or signed any paper to that effect.

That libelants deny each and every allegation of affirmative matter contained in said answer and claim not hereinbefore specifically denied.

And libelants humbly pray as in and by their libel they have already prayed.

GASTON JACOBI,  
 CHARLES RUFF,  
 By JOHN C. HOGAN,  
 Their Proctor and Attorney.

State of Washington, }  
 King County. } ss.

Gaston Jacobi, being first duly sworn, on oath says that he is one of the libelants named in the foregoing action, and that he makes this affidavit in his own and his colibelant's behalf; that he has read the foregoing replication, knows the contents thereof, and that the same is true, as he verily believes.

GUSTAV JACOBI.

Subscribed and sworn to before me this 8th day of Nov., 1897.

[Notarial Seal] JOHN C. HOGAN,  
 Notary Public in and for said State, Residing at Seattle,  
 Wash.

Due service admitted Nov. 8th, 1897.

STRUDWICK & PETERS,  
 Attorneys for Respondents.

[Endorsed]: Replication. Filed Nov. 10, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.



*In the District Court of the United States, District of Wash-  
ington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE" and  
JOEL P. GEER,

Claimant.

### **Stipulation.**

It is hereby stipulated and agreed by and between the parties to the above-entitled action that upon the filing of this stipulation the above cause may be set down for trial by the Court so as to be tried on the 27th day of November, 1897, or on as early a date thereafter as the Court may fix. It is further stipulated that the cause as to the intervening libelants herein shall be submitted and tried at the same time as the principal cause, and shall abide the issues therein. That the answer of claimant herein shall stand as the answer to intervening libel, and all evidence introduced in reference to libelants Jacobi and Ruff shall be considered as applying also to intervening libelants; and all evidence on behalf of claimant shall be considered against said intervening libelants.

Nov. 20, 1897.

STRUDWICK & PETERS, and  
WILLIAMS, WOOD & LINTHICUM,  
Proctors for Claimant.

JOHN C. HOGAN,  
Proctor for Libelants.

PATTERSON & EASLY,  
For Intervening Libelants and for Libelants.

[Endorsed]: Stipulation. Filed Nov. 24, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

*In United States District Court for the District of Washington, Northern Division.*

GUSTAVE JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE,"  
and THE PORTLAND AND  
ALASKA TRADING AND  
TRANSPORTATION COMPANY,  
Respondents.

JOEL P. GEER,

Claimant.

No. 1128.

### Testimony.

To the Hon. C. H. Hanford, Judge of the above-entitled court:

Your Commissioner, upon the reference heretofore made, respectfully submits the following report:

That on November 12th, 1897, by agreement of parties, the hearing of testimony was begun, and the following proceedings had:

#### LIBELANT'S TESTIMONY.

GUSTAVE JACOBI, one of libelants, being duly sworn, testified in their behalf as follows:

Q. By Mr. HOGAN.—You are one of the libelants in this case, are you? A. Yes, sir.

Q. What is your age?           A. I am forty-three.

Q. Where are you living at the present time?

A. In Seattle.

Q. When did you come to Seattle?

A. I came to Seattle the first part of July.

Q. From what place?           A. From New York.

Q. What is your business or trade?

A. I am a cigarmaker.

Q. Are you acquainted with the steamship "Eugene"?

A. Yes, sir.

Q. When did you first know the "Eugene"?

A. I first came to know that vessel when I seen it advertised in the "P. I."

Q. About what date?

A. It was advertised right along. From about the 16th of August up.

Q. What year?           A. This year, 1897.

Q. What was your business in coming to Seattle?

A. My purpose was to come to Seattle and go to Dawson City.

Q. Did you have any business with the steamship "Eugene" through its owners or representatives?

A. Yes, sir.

Q. What was that business?

(Objected to by counsel for claimant until the witness has shown with what persons he had the business, and also shown their competency to contract for the "Eugene.")

Q. State what business you had, just briefly.

A. I took passage on the "Eugene."

Q. From what place?           A. From Seattle.

Q. To what place?           A. To Dawson City.

(Proctor for claimant moves to strike the answer of the witness as not responsive to the question.)

Q. Now, you may go on and state how you came to take passage from Seattle to Dawson City, and state the facts that led to it.

A. I came here with the intention to go to Dawson City to take passage on the best boat, where I thought it would be possible to get there. Between August 16th, and, I guess, it was around in that neighborhood, I seen an advertisement in a paper, that the "Eugene" was going to make a trip from Seattle to Dawson City, to be towed up by the "Bristol."

(Proctor for claimant objects to what the witness saw in the newspaper as incompetent, irrelevant, and immaterial. Proctor for the libelants proposes to show later that it was there by authority. Proctor for claimant renews the objection.)

A. So, after I inquired, I found out that particulars can be found out in the ticket office, J. Gould, First avenue, so I went there and inquired. When I got there, Mr. McGuire was the president—

Q. Who is Mr. McGuire?

A. Mr. McGuire is the promoter of the Portland and Alaska Transportation and Trading Company—he is one of the promoters.

Q. Do you know what, if any, office he holds in that company?

A. He is president of the company, so Mr. Gould told me.

(Proctor for claimant objects to the testimony as incompetent, on the ground that it would not bind the corporation.)

Q. What was said and done at Gould's office then?

A. I told Mr. Gould, if he thought it was possible for me to get a safe passage from Seattle to Dawson City—so the gentleman told me, that he thought there was the best and the last chance, with the sternwheel boat "Eugene" to be towed up by the "Bristol," and by my paying \$300, being secured to be landed in Dawson City, with 1,500 pounds of provision. Mr. Gould told me after I inquired about—I being a stranger here—what kind of a

company it was, Mr. Gould stated that it was the best company, and being sure and secure that if I bought a ticket in his office that I would be safe with my 1,500 pounds of provision, to be landed in Dawson City this fall. Furthermore, I inquired about my outfit and all that was necessary for me to do to get everything here in shape in Seattle, which was necessary for my trip. Mr. Gould advised me to inquire of Mr. McGuire, so Mr. McGuire told me that I ought to go to work and buy my ticket, pay the money for it, and go to work and get my outfit, send my outfit down to the wharf when done, and go as soon as possible on board the "Seattle," which was going to take me over to Victoria, where the "Bristol" would be ready on the 24th of August, to start with the "Eugene" in tow for a trip to the mouth of the Yukon river, where the boat "Eugene" will take us off the "Bristol" and land us on or before the 15th of September in Dawson City.

Q. I would like to ask you if Mr. McGuire mentioned any wharf where you were to deliver the goods.

A. He told me to take my goods down to the wharf, where the Victoria boat in Seattle leaves.

Q. Do you know the name of that wharf?

A. I do not know the name of that wharf; I have forgot it.

Q. I will ask you if it was the Yesler Wharf.

A. It was the Yesler Wharf.

Q. And what further did he say about them after you delivered them there?

A. I bought my ticket and paid the money for it; after I had my outfit in shape, Mr. Cooper and Levy, the place where I bought my outfit, I went back to Gould's office and I inquired for Mr. McGuire. After I met the gentleman I told him that I had my outfit, everything was in complete shape, and I was ready to go, so Mr. McGuire told me to go to work and get my—send my whole

outfit down to the wharf, the Yesler Wharf, and that was all that was necessary for me to do. Of course, just as soon as I would deliver my goods at Yesler Wharf, the Portland and Alaska Transportation Company would take care of it, and I would not have any more trouble or bother whatever with it until we reached our destination, Dawson City.

Q. Was anything said as to the marking of these goods by Mr. McGuire?

(Objected to by proctor for claimant as leading.)

A. He told me to mark the goods "S. S. 'Eugene,' Dawson City," and my name.

Q. State whether or not you marked them that way?

A. We did mark them that way.

Q. What did you do with reference to the delivery of these goods, afterwards, if anything?

A. I done just exactly as Mr. McGuire told me to do, and furthermore he told me, after I had asked him about my going over, and he says, "The sooner you go over, the better it will be for you, because there will be a rush"; so I left.

Q. And before you leave that, I would like to ask you if you have these advertisements that you saw in the papers advertising this trip?

A. Yes; I found part of them and I have got them right here—the whole outfit.

Q. Are these the papers?                   A. Yes, sir.

Q. How many of them are there?

A. Ten, I believe.

(Proctor for libelants offer papers identified by the witness in evidence. Proctor for the claimant objects to the admission of these advertisements in evidence on the ground that they are irrelevant, incompetent, and immaterial, and no proper ground has been laid for their admission. The source of their publication or distribution is not shown, nor any such source as to bind the

claimant or the steamer "Eugene." Furthermore, the alleged advertisements and articles are fragmentary evidence. Proctor for libelant states that he expects to show by other witnesses that these advertisements were published by the authority of the steamship "Eugene" and her managers and owners. Proctor for claimant renews his objection, and makes the further objection that they are irrelevant and immaterial, for the reason that it is not shown that the witness acted on and had reliance on the advertisements.)

Q. I will ask you about these clippings, Mr. Jacobi; from what papers were they taken?

A. I took them from the "Post-Intelligencer" of Seattle.

Q. I will ask you whether or not they include the whole article in every case.

(Objected to by proctor for claimant as grossly leading and further, for the reason that the paper would show for itself.)

Q. Whether they include the whole piece written in the paper each time? A. Yes, sir.

Q. I will ask you whether or not these are the advertisements you refer to or part of them, in your testimony, where you saw the reports of the "Eugene" in the papers here. A. Yes, sir.

(Papers marked Libelant's Exhibit "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J," and returned herewith.)

Q. Now, did you see any other written advertisements before you bought your ticket at the office of Gould and Company as to this expedition?

A. Yes, sir, I did.

Q. Describe that advertisement—not what its contents were, but where it was.

A. I seen one at Mr. Gould's office. I seen a big ad-

vertisement right in front of the door; it was about two feet long by one foot wide.

Q. Have you that advertisement?

A. No, sir, I could not get it.

Q. Have you tried to get it?

A. Yes, I tried to get it, but Mr. Gould told me that there was a rule, generally, to destroy those advertisements after they were done with selling tickets.

Q. What did that advertisement state?

(Objected to by proctor for claimant for the reason that no proper foundation has been laid for the introduction of secondary evidence.)

A. It stated that the S. S. "Eugene" was one of the best and finest boats, sternwheeler, being towed up by the powerful S. S. "Bristol," to the mouth of the Yukon, and from the mouth of the Yukon, going up to Dawson City with her passengers, from Seattle.

Q. I will ask you if there was anything said as to the company or fare?

(Objected to by proctor for claimant as leading.)

A. As much as I could learn, as I could inquire, I found out that—

Q. On the bill, I say, which you read.

A. It said on the bill, of course it said on the bill, one of the best kind of boats made up for that purpose for a river boat. She is a powerful boat and in A No. 1 shape.

Q. What about the amount of passage or fare for the trip?

A. It said that the whole trip from Seattle to Dawson City, the fare would be \$300.

Q. Did it purport to be signed by any person, any name attached to it?

A. That is something I could not remember.

Q. But it was on a bulletin in Gould's office?

(Objected to by proctor for claimant as leading.)

A. Yes, sir.



Q. Now, when did you leave Seattle on this trip?

A. I left Seattle August 22d.

Q. How did you go over?

A. I went over on the steamship "Seattle," on the 22d at 10 o'clock in the evening.

Q. At whose request or under whose direction, if anyone's?

A. The direction of Mr. Gould and Mr. McGuire. When I bought my ticket, I thought that the "Bristol"--  
(Proctor for claimant objects to the witness stating what he thought.)

A. —would take the "Eugene" from Seattle on the trip.

Q. Did they tell you that?

A. That's what I understood when I first inquired at Mr. Gould's office about the trip.

Q. What amount did you pay for your passage?

A. I paid \$300.

Q. Who did you pay it to?

A. I paid it to Mr. Gould.

Q. Who was present when that was paid?

A. Mr. Gould's clerk was present.

Q. Anybody else?      A. Nobody else.

Q. Then what time did you reach Victoria?

A. I reached Victoria the next morning about 8 o'clock, on or before.

Q. Did you pay any passage money to the "City of Seattle"?      A. No, sir.

Q. That was part of the trip?      A. Yes, sir.

Q. Well, what did you do after getting to Victoria?

A. After I got to Victoria, I went to a hotel, the Queen's Hotel.

Q. Who, if anybody, did you see there, relating to the steamship "Eugene"?

(Objected to by proctor for claimant as leading.)

A. The next day I met Mr. McGuire over in Victoria, and he told me that after I inquired how our—

(Objected to by proctor for claimant as not responsive to the question.)

A. — situation was, told that everything was bright and fair, and that he expected the "Bristol" over on August 24th, and that everything would be in complete shape; so we waited there. Mr. McGuire told us the next day that he is going to leave us again, but Mr. McFarland, which was introduced to us as being the manager of the whole expedition, was going along with us and that he handed us over in his hands, and that Mr. McFarland will take care of us until we reach our destination, Dawson City.

(Proctor for claimant moves to strike the answer of the witness as irresponsive to the question, and objects to it as incompetent and irrelevant, and as to any statements or representations of McFarland or McGuire, since no connection is shown between them and the claimant of the ship "Eugene.")

Q. Go on.

A. So we stayed there; the 24th and 25th passed by; we were anxious, for we thought that the delay of our time, the time set to leave—the 24th—every day delay would probably bring us in bad shape, so all of the passengers of the expedition were present, got in a meeting, Mr. McFarland was present. Of course most of the people—part of it invested all the money they had in their outfit and in their passage ticket, and they were kind of anxious about their board.

(Proctor for claimant objects to all this testimony as irresponsive and incompetent.)

A. Mr. McFarland stated in that meeting that from the dates that our tickets called, which was on the 24th of August, we would be in their hands, and they would take care of us; they would pay our board just about the

same as if we were on board of the ship. We waited and waited until August 31st, when the "Bristol" arrived. We took passage on the "Bristol."

Q. Did McFarland pay your board?

A. Mr. McFarland paid our board bill and everything was paid up to the date we left Victoria. He paid as much as a dollar and a half a piece—part of it less.

Q. Go on then.

A. Everything went on nice and bright. The same morning when we were ready to go we were all around the wharf, and the next thing we seen the sternwheel ship "Eugene" coming up, pulling in close on to the "Bristol," and heard the conversation between the two captains, the captain of the "Bristol" and the captain of the "Eugene"; the captain of the "Bristol" told the captain of the "Eugene" to pull out, we were ready to go, and go ahead. Well, the "Eugene"—

(Objected to by proctor for claimant as incompetent, irrelevant, and immaterial.)

A. —went ahead, and in about a couple of hours, a little more or less, we started and went on and picked up the "Eugene" and took the "Eugene" in tow, and went that night and all that day and that night and the next day, and the next evening, on or before 4 o'clock, or after 4 o'clock, we arrived at Comox.

Q. Was the "Eugene" in tow all the time?

A. Yes, the "Eugene" in tow right along, and I was surprised—

(Proctor for claimant objects as immaterial.)

Q. Do not state what you were surprised by, but what you saw.

A. That the "Bristol" was coaling up. Of course Mr. McFarland told us that after the "Bristol" coming over to Victoria everything was in complete shape; she was coaled up and everything, and we would pull out that day; no further delay. So we laid in Comox for three

days. The "Eugene" was tied up alongside the "Bristol," and the passengers communicated from one boat to the other; you could go on either one boat or the other. About the third day, when we were pretty near ready to go, some of the miner's outfits in the front of the "Bristol" was transferred from the "Bristol" to the "Eugene," and part of my stuff went too, and so I inquired of the mate, and the mate he says the "Eugene" was loaded too heavy in front—

(Proctor for claimant objects to anything the mate told the witness, as incompetent.)

A. —the "Bristol" being loaded too heavy in front.

Q. How long did they transfer the freight or outfits?

A. That took them about four hours, and they even asked the passengers to work, and they did it freely.

Q. How did they do it?

A. They hoisted out with a steam winch and carried it over on their backs.

Q. How many men were working at it?

A. There was about, in my estimation, 12 or 14.

Q. For how long?

A. For about four hours.

Q. Well, did you see any of your outfit on the "Bristol" before that time?

(Objected to by proctor for claimant as leading.)

A. No, sir, but I knew when I was on board the "Bristol," I looked down the main hatch through the fore hatch to see where our goods were stored, and I seen almost all of my outfit was on top of it.

Q. And that is what you say you saw moved?

A. Yes, sir, and there was something happened which I did not very well understand—

(Objected to by proctor for claimant as not responsive to the question.)

Q. State what happened there then.

A. The sheriff or constable came over on the "Bris-

tol" and climbed over from the "Bristol" onto the "Eugene," and put a paper on the mast on the "Eugene" and tied her up, the way, I understood, on account she broke the law—

(Object to by proctor for claimant as incompetent, irrelevant, and immaterial as to what the witness understood.)

A. (Continuing.) In Victoria.

Q. Well, then when and how did the expedition leave Comox?

A. When we were ready to go out all together, all at once, the "Eugene" broke loose and steamed off; there was quite an excitement on the deck, and the sheriff came running along and was going to send another boat after the "Eugene," and so we got loose and went off with a "Hurrah." We went up and caught the "Eugene," picked the "Eugene" up, took the "Eugene" into tow, and went.

Q. How long after leaving Comox before you—

A. We left Comox—it's about a space between four hours. We went up, picked the "Eugene" up, took the "Eugene" in tow, and went that day and that night and the next day until about four o'clock in the afternoon; I heard some hollering on the "Eugene," which was in tow of the "Bristol," while I was under deck. I hurried on deck and seen the "Eugene" pretty near half way up towards the "Bristol." I seen two fellows holding up two blackboards, above their heads, and as much as we could make out was, "We are broke down. Take us back to the nearest port," when the "Eugene" fell back, and the "Bristol" swung off from her course, and went back that day, the very same day, towing the "Eugene" right along to a little Indian station or village, called Alert Bay, and there we got the "Eugene"—the "Bristol" went to anchor and the "Eugene" was pulled up alongside of the "Bristol," and people went freely from boat to boat. We

laid there for three days. By that time several meetings were held on account of what to do further. There we found that our trip could not be done.

(Objected to by proctor for claimant as incompetent, without the witness showing from whom such was found out, and unless they were persons who could bind the claimant.)

A. (Continuing.) The second day we laid there, Mr. Van Ness, which was the secretary of the passengers' organization, which was organized in Victoria, came over after we had the meeting, and some of the passengers from the "Eugene" were afraid, and came over to the "Bristol," and Mr. Van Ness told me and several others of the passengers that he would not go to work and stay on the "Eugene" overnight. We did not know what might happen, and we did not know what kind of steps we were going to take to see that everything would go on all right, so we decided to take our blankets and mattresses over on the "Eugene" that night, and we went to sleep and watched her, and I had a conversation with Captain Lewis about the same thing.

Q. Who was Captain Lewis?

A. He was captain on the "Eugene." He was proud of us, and he told us he was proud of us that we were not afraid, and that there was no danger at all on the "Eugene." The next morning I heard some hollering—my time was off and someone else was on the watch, I don't know who it was—and I got up and run on deck, and somebody hollered over that "McFarland is going to leave us with his wife and boy and baggage," and so we hurried down on the "Eugene" and looked out overboard, and there we seen McFarland was going to step in the boat and was going to push off—

(Objected to by proctor for claimant, as incompetent, irrelevant, and immaterial, and as not responsive to the question.)

A. (Continuing.) (When Mr. Van Ness ordered them back. So he did. The next day, early in the morning—

(Objected to by proctor for claimant, for the reason that counsel for libelant is not putting questions to the witness, and for the reason that this is purely a voluntary statement by the witness, and is incompetent, irrelevant, and immaterial.)

Q. Proceed.

A. A meeting was held the next morning, and Mr. McFarland, by failing to leave us that night or that morning, seemed to be more downhearted. We called a meeting the next morning and was asked by the organized passengers, president, and chairman, how to go further and what to do. It was asked if it was possible, and that if the "Eugene" really broke down, to be repaired.

Q. Where was Captain Lewis at that time?

A. Captain Lewis was introduced to the meeting by Mr. McFarland as an old sea captain around Alaska for the last 16 years, and the best man who could give us the best information about our whole trip, and the best we could do under the circumstances, where we were at the present time. So Mr. Lewis stood up in front of the meeting there and told us that he knew all about St. Michael.

(Proctor for claimant objects to any representations or statements of Mr. Lewis as incompetent to bind the "Eugene" or this claimant, and desires it to be understood that he objects to any representations or statements by McFarland or the McGuires or Mr. Lewis, and desires that it be understood that this objection is urged to all such testimony without interrupting the witness.)

Q. What was the relation of Mr. Lewis to the "Eugene," if you know?

A. Mr. Lewis was leading captain of the "Eugene."

Q. Now, go on and state what he said.

A. He was introduced to the meeting by Mr. McFar-

land to state and to tell us that if it was impossible for us to go down to Dawson City on the River Yukon by not having a river boat, by not being able to take the "Eugene" along we would not have any chance at all to get to Dawson City and that it was impossible under the circumstances the "Eugene" was in at the present time to take her along and she would not stand the sea, and she was unseaworthy and that it was no use for the "Bristol" to take the "Eugene" up to Dawson City—to St. Michael, so that if we would still stick to it and wanted to go ahead in our expedition, the only chances we would have to reach St. Michael and claimed that St. Michael was a desert island—there was no wood except a little drift-wood, and that was all picked up by the Indians, so we would have no chance at all to leave St. Michael, and we had to stay there, and he was quite sure that if we stayed there over the winter that half of us people would be starved to death or froze to death, and saying that it was useless for us to go ahead. So Mr. McFarland, after Captain Lewis was done with his speech—Mr. McFarland was asked if the "Eugene" could be repaired in time so as to go up anyhow, if it would only take a couple of days. Mr. McFarland denied it; he said no. And he was asked if the "Eugene" would be—could be under any consideration towed up to St. Michael, and he said no; then the passengers had a talk among themselves, what is the best to do. Could not come to any conclusion. Part wanted to go up, the most of them did not know what to do, so Mr. McFarland was asked by the chairman of the passengers' society if he would not think the best thing to do—if he thought the best thing now, under the circumstances, to go back to Victoria and have the best chances there to get the boat repaired. Mr. McFarland said that he could not do nothing in the case, because the present time he said he did not know what to do himself, and he



could not say nothing because there was some more people had been asked about it going back. He said there was Mr. Johnson, the purser on the "Bristol," had to decide about that. He was the promoter of the "Bristol." So Mr. Johnson was called to the meeting and Captain McNamara, the captain of the "Bristol." The captain claimed that he had nothing to do with this at all, that this was Mr. Johnson's place, and that the captain only had to do what Mr. Johnson told him to do. So we asked Mr. Johnson if he was going to take us back, so we could get the "Eugene" repaired in Victoria. Mr. Johnson says, the only thing in this case is, either go up to St. Michael and be set off there, or I have got a paper which you all have got to sign, which means the release of the "Bristol." So we asked Mr. Johnson if he would take the "Eugene" in tow and go to St. Michael; he said that the "Eugene" will not be taken in tow again on the trip to St. Michael, and that we would be set off in St. Michael, and the "Bristol" had fulfilled her duty for what she was chartered for. We asked furthermore what he thought would become of us. He told us that if we didn't like it at St. Michael and we wanted to go back on the same boat, we had to pay for it, which would be \$54, and I have forgot how much the freight was, and he was to take us back to Victoria then. So there was another meeting held the very same day in the afternoon, right after dinner, and we seen the miserable situation which we were in by the way of going ahead to St. Michael, and running in that situation where we probably had to risk our lives; by the way, Captain Lews stated as an expert—we called on Mr. McFarland to get us out of the misery. Mr. McFarland advised us by stating the best way in the situation we were in at the present time, that "I advise you to go to work and sign the paper that the purser of the 'Bristol' had," so he signed it and signed it under protest,

and "I hope that we will all together come out on the end satisfactory to everybody," so he said. We all signed and he signed the paper the same time as his wife, and they all signed with the exception of not one. Just as soon as the paper was handed over to the purser, Mr. Johnson, of the "Bristol," the next morning we started off and went back; took the "Eugene" in tow again, and when we asked the captain, Mr. Lewis, to let us go on board the boat, on board of the "Eugene," he said he had changed his mind, and under no consideration would he allow any of the passengers on that boat any more—on the "Eugene" any more.

Q. Why was that, did he say?

A. The reason why, I could not very well understand, and nobody, but after we started up and came close to Victoria, about five o'clock in the evening, we were about between 10 and 15 miles away from Victoria, all at once the "Eugene" slipped the rope and disappeared, off she went and with a "Hooray," we went and arrived at Victoria the same night.

Q. Now, at Alert Bay, where you stopped these three days, I will ask you if any transfers of freight and baggage were made.

(Objected to by proctor for claimant as leading.)

A. Well, after everything was completed, that it was decided that this paper was signed, and it was decided that we were going back to Victoria, then the freight and what was all transferred on the "Eugene" in Comox was carried back on the "Bristol," and everybody helped, even half of the passengers, to get done with is.

Q. Then you came back to Victoria?

A. Then we came back to Victoria.

Q. What time did you arrive at Victoria?

A. We arrived at Victoria it was in the evening, be-

tween six and eight, I think; but I ain't sure of that, because I was so disgusted.

Q. The hour does not matter; what day?

A. The date, I will have to look that up; I could not tell the date for sure, but I can get the date if it is necessary.

Q. Now, when you paid that passage money to Gould, I will ask you whether or not he gave you any papers or tickets of any kind; if so, what.

A. Mr. Gould put the whole tickets and the whole business in an envelope, and he says, "Be very careful, don't lose any; everything is in complete shape."

Q. Have you got these papers that he put in the envelope?

A. I have got one ticket which he put in the envelope and one ticket which I had, and thought it was all right. It was exchanged in Victoria by the firm of Dabidge & Company.

Q. It was exchanged there?

A. It was exchanged there by Dabidge & Company.

Q. What is this paper I show you?

A. This is one of my tickets and the ticket which Mr. Dabidge handed in to me—when we were out the second day from Victoria, the purser came up and he asked for tickets, so I showed him a ticket and he took it away. Now, I says Mr. Johnson, I says—

Q. That is not important. He gave you a receipt in place of it?

A. Yes, he gave me a receipt; I wanted a receipt. So he said all right, here is a receipt for you, and that is what I got.

(Papers offered in evidence by proctor for libelant. Proctor for claimant objects to the introduction of the papers, for the reason that no proper foundation has been laid to show the authority of the person who purports

have issued the paper to bind either the steamship "Eugene" or this claimant. Papers marked Libellant's Exhibits "A" and "L," respectively, and returned herewith.)

Q. Now, I will ask you what your outfit cost you and what it consisted of.

(Proctor for claimant objects to any testimony in support of damages claimed for loss of time or loss of money on account of outfit, as incompetent, irrelevant, and immaterial.)

A. I consider the time I lost—

Q. I asked you first what the outfit consisted of and what it cost?

A. My outfit cost me \$268, which was provision and clothing and hardware for a year and a half's outfit.

Q. Was that the outfit you say you delivered to the Yesler Wharf here?      A. Yes, sir.

Q. Did you ever get that back?

A. Yes, sir.

Q. When?

A. I got that back, after we were dumped off at Victoria. I had to lay there for four weeks because I didn't have money to pay duty on that.

Q. What was the value of that when you got it back?

A. When I got it back, I sold it, sold the groceries and lost pretty near one-third of it.

Q. How much, in dollars, did you lose on the outfit?

A. I lost on my outfit close on to a hundred dollars.

Q. Now, what time did you lose, how many days in all, as near as you can tell?

A. I lost three months, pretty near, less a couple of days so far.

Q. What would your time be worth per day?

A. My time, as an average, is about five dollars per day. I can prove that I made more than that.

Q. What would your damage be, then, for loss of time, in the aggregate, approximately, as near as you can tell?

(Objected to by proctor for claimant as incompetent and calling for a conclusion of law.)

A. My damage for time I consider about \$300, within that time.

At this time, further proceedings were adjourned until 1:15 P. M.

Afternoon session; continuation of proceedings pursuant to adjournment at 1:15 o'clock.

GUSTAVE JACOBI, on the stand for further direct examination.

Q. (By Mr. HOGAN.) I will ask you if you stated the whole of the conversation between Captain Lewis, Mr. McFarland, and the passengers at the time of the meeting at Alert Bay, whether there is anything further.

A. I can state that we were very doubtful, because we did not know which was right to do. First, Captain Lewis got up and told us that if we signed that paper, as he looked at it, that it would not stand in law at all, because we were forced to do it—running into misery by being landed in St. Michaels. Mr. McFarland got up afterwards and told us that if you release the “Bristol” by signing that paper, that Mr. McFarland would go to work and take the responsibility of the “Eugene” and the Portland Transportation Company, and he furthermore stated that they were earnest business people, and had more business, and would not want to have a bad name in it, and we would get our money back and damages which we were entitled to.

#### Cross-Examination.

Q. (By Mr. PETERS, on behalf of the claimant Joel

P. Geer. Mr. Jacobi, where did you come from, to the city of Seattle?

A. I came from New York.

Q. New York City or New York State?

A. New York City.

Q. How long have you lived there?

A. I lived in New York City several times. The last time I lived in New York City was for four months.

Q. What was your business there?

A. I made cigars.

Q. What your business address in New York City?

A. 334 East 13th street; that's where I lived.

Q. Were you manufacturing cigars for yourself or for others?

A. I worked for a factory.

Q. You are a laborer, then?

A. Yes, sir.

Q. And what did you get?

A. Me and my wife worked together; we got piece-work.

Q. What did you get?

A. We got \$12 a thousand.

Q. You and she would take jobs, piecework together, then?

A. Yes, sir.

Q. You never figured up exactly how much you got yourself?

A. Oh, yes, I can figure that out.

Q. And how did you figure it out?

A. I figured out how many cigars we make, how much I get for a thousand, and how much a bunchmaker gets for making the bunches.

Q. You never figured it up as to how much you would get and how much your wife got? You just figured how much you two got?

A. Yes.

Q. Now, did your wife come out here with you on this trip?

A. No, sir.

Q. You came out here about the 16th of August, you say, this year?

A. No, the beginning of July.

Q. And how did you happen to meet this man Gould?

A. I came out here with the intention—I am a cigar-maker for 18 years. I was in Australia four years mining, and the last three years I was in Africa prospecting in the southwest mountains, and came over to New York, hearing about the Yukon excitement, the Alaska excitement, about the mining.

Q. You heard about that in the eastern papers?

A. I heard about that in Africa. And there was not much to do in Africa, so I thought well maybe there would be a good chance for me to go back and go up to Alaska.

Q. So that is the way you came to Seattle in July?

A. Yes, sir.

Q. Did you know Mr. Ruff, the other libellant here, before you bought your ticket?      A. No, sir.

Q. When did you first meet Mr. Ruff?

A. I met Mr. Ruff in Victoria.

Q. Now, you stated that you took passage on the "Eugene." You meant by that you bought a ticket?

A. Yes.

Q. The ticket that you put in evidence here already?

A. Yes, sir.

Q. As a matter of fact, you never saw the steamer "Eugene" until you got to Victoria, did you?

A. No, sir.

Q. Now, this ticket office of Mr. Gould's, that was in Seattle here, was it?      A. Yes, sir.

Q. Where was this sign that you speak of about the "Bristol" and "Eugene" going to Dawson City—whereabouts was that?

A. That was a sign about 2 feet long, about one foot

wide; it was placed, if I mistake not, on the right side going into Mr. Gould's office, on a nail.

Q. It was in the entry of the building, was it not?

A. It was outside.

Q. Outside of the building, entirely?

A. Yes, sir.

Q. Mr. Gould's office is on the ground floor of the building, is it not?      A. Yes, sir.

Q. There are other offices in the same building, other rooms?

A. That is something I don't know anything about; I never was upstairs.

Q. On the ground floor are there not other rooms?

A. Not that I know.

Q. You did not examine that so particularly, as you did about the advertisement?      A. No, sir.

Q. Now, what sign did Mr. Gould have on his office besides that bulletin?

A. I did not pay any attention to that at all. I seen there was some typewriting machines inside, and I really don't know what, but it seemed to be a ticket office.

Q. How did the sign read about the ticket office?

A. That I could not tell.

Q. Now, did not the ticket broker go to you and offer to sell you a ticket and that is the way you came down to Gould's office?      A. No, sir.

Q. How did you come to go to Gould's office?

A. Every morning and every night I read the paper; course I was anxious to go to Dawson City, and I intended in the first place to buy a ticket on the "Eliza Anderson," but when I came to see the boat myself, I found out that it was very risky undertaking, and, of course, I did not like that boat.

Q. So you went and examined the "Eliza Anderson," personally?      A. Yes, sir.



Q. State whether or not the "Eliza Anderson" got through, or do you know.

A. I heard about it, but I don't know nothing about that affair.

Q. What is Gould's name in full?

A. If I ain't wrong, it is Jay Gould.

Q. You don't know anything else about the surroundings of the office, excepting that sign?

A. I was there about five or six times, before I bought a ticket. And then I was around and saw Mr. Kline & Rosenberg, and seen Mr. Coleman—he is engaged there—and I inquired about this firm, and he told me that this firm was all right.

Q. Well, you knew Kline & Rosenberg, did you?

A. Yes—I beg your pardon, I knew the man, I didn't know the man from the east, but I got acquainted with him here when I arrived.

Q. Who introduced you to Kline & Rosenberg?

A. Mr. Coleman did.

Q. Coleman told you that this trip was all right?

A. He told me it was the best chance I could get.

Q. You knew that Mr. Coleman told you what he believed to be true?      A. Yes.

Q. So you relied on that, didn't you?      A. Yes.

Q. Now, you did not learn all that sign had on it at the time that you were buying your ticket?

A. No, sir.

Q. You have been down there since the suit began, to look at it?      A. Yes, I inquired around.

Q. You have been down there to see the sign since, haven't you?      A. Yes, sir.

Q. Did you ever ask Gould to let you take that sign?

A. No, sir.

Q. The last time you were down there, it was there, was it not?      A. You mean now?

Q. Yes.

A. No, I didn't see no sign now.

Q. How long ago since you saw it?

A. Oh, I seen that sign since I was in Seattle, until I left.

Q. Then you haven't seen it since that time?

A. No, sir.

Q. Have you been down and asked Mr. Gould what became of it?

A. I asked him about that; I would like to have one, but he says he didn't have any.

Q. How long ago was that?

A. That was about a week ago.

Q. You made no further inquiry about it?

A. No.

Q. Now, the only reason you say you have for believing that Mr. McGuire was president of that trading company that you speak of was the fact that he told you so?

A. Mr. Gould introduced me to Mr. McGuire.

Q. And told you at that time? A. Yes, sir.

Q. That is the only information?

A. And furthermore, I got acquainted through business people, people from Portland, and they said that Mr. McGuire was a business man in Portland and so was Mr. McFarland, and they knew the men, and they told me they were good earnest business people.

Q. Now, the "City of Seattle," that boat was on her regular run between here and Victoria?

A. Yes, sir.

Q. There were other passengers on there besides yourself, who were going on the "Bristol" to St. Michaels? A. Yes, sir.

Q. You all went along together with these other passengers?

A. Well, I went of course, I went, I didn't know noth-

ing about this until I went according to Mr. McGuire; he told me how to do. I did not want to do nothing without his knowledge.

Q. So you took the "City of Seattle" over to Victoria?

A. Yes, sir.

Q. And on the 31st of the month you went on the "Bristol," and the next stop you made was at Comox?

A. Yes, sir.

Q. Now, the last that you saw of your outfit was when you sent it down to the Yesler Dock in town, was it not?

A. Yes, sir.

Q. Your outfit consisted of food, hardware, and clothing?

A. Yes, sir.

Q. Your personal baggage you took along with you on the "City of Seattle" and on the steamer "Bristol"?

A. That was only what you needed?

Q. That's what I mean; such as you usually take in traveling?

A. Yes, sir.

Q. Now, when you got to Comox, did you go aboard of the "Eugene"?

A. Yes, sir.

Q. You did not take any meals on her, did you?

A. I did not; there were no meals served when I was on her.

Q. You did not have any stateroom on her, did you?

A. No, sir.

Q. None of the passengers had staterooms or meals on her?

A. There was seventeen passengers on the boat right along.

Q. On which boat?

A. On the "Eugene."

Q. You were not one of them, were you?

A. No, sir.

Q. You just went aboard of her at Comox out of curi-

osity, to look over her and see what kind of a boat she was?

A. I went on that boat, my intention that I thought that the "Eugene" was the boat which was in connection with the "Bristol" and considered both boats one body, to make my trip on it.

(Proctor for claimant moves to strike out the answer as irresponsible to the question.)

Q. You just went on board the "Eugene" to look over her?

A. I went on board of the "Eugene" of course to look her over and was proud to see the boat.

Q. You were not on her when she was sailing at all?

A. She was not sailing.

Q. She was anchored at Comox?

A. She was. She was tied to the "Bristol" at Comox.

Q. The "Bristol" was taking coal?

A. The "Bristol" was taking coal.

Q. Was the "Eugene" taking coal too?

A. No, sir. Excuse me, the "Eugene" could not fire any coal, she had all the wood she wanted; she had all the wood on board.

Q. She used wood as fuel?

A. Yes, sir.

Q. And the next time you were on the "Eugene" was at Alert Bay, when you went on there as a committee of the passengers on watch?

A. Yes, sir, I was ordered by Mr. Van Ness, who was secretary of the Miners' Association.

Q. Now, when was this miners' committee organized?

A. The miners' committee was organized in Victoria. The date I could not state, but it was right after the 24th of August.

Q. And whenever you had any—

A. And we seen that every day delay would count on

us, and the committee made up papers over there in the first place, after we had to lay there for nine days, that we were anxious and part of us wanted our money back and so forth, and in that meeting we had that night they said that to keep the men down, said all right, we go, and Mr. McGuire was there and held a speech, and Mr. McFarland was there and held a speech—we will go, but we went from Victoria on our trip under protest, not to be sailed in time on August 24th, when the time was set.

Q. Now, what was the reason of your anxiety about sailing on time?

A. We thought that if we did not get up in time to St. Michael before the river froze up, the "Eugene" would not be able to get to her destination, and would delay the whole expedition.

Q. Now, that is the view the whole committee took of it?

A. Yes, sir.

Q. That is the society you speak of?

A. Yes, sir.

Q. Did Mr. McFarland and Mr. McGuire tell you that you would be all right.

A. Yes, sir.

Q. Now, all of the grievances that you had, all of the complaints that you had to make was made to this committee?

A. Yes, everybody had a right to explain his complaints.

Q. To the committee?

A. To the meeting to the committee, to the meeting and specially to Mr. McGuire and Mr. McFarland, who were present.

Q. So this committee undertook the management of the party did they not?

A. Yes, sir.

Q. Now, you say that at Comox, they were unloading outfits and freight from the "Bristol" to the "Eugene"?

A. Beg your pardon, there was no freight at all, in this hatch there were only miner outfits, what we called miner outfits, that was all there was in the front hatch.

Q. That is all then that was unloaded at Comox?

A. Part of it was transferred in Comox from the "Bristol" over to the "Eugene," and when we got back and we anchored in Alert Bay, the "Eugene" lay alongside of the "Bristol," and the outfits which were transferred on the "Bristol" in Comox were transferred from the "Eugene" back to the "Bristol" at Alert Bay.

Q. Now, how much of your outfit did you see down in the forward hatch?

A. That is something I could not tell you.

Q. How was your outfit done up?

A. My outfit was all done up in bags, and the common bags around the outside.

Q. It was in several packages was it not?

A. Yes, sir.

Q. Well, it was all mixed in—there were about ninety people in this expedition that you joined?

A. Ninety-four.

Q. All of their outfits were along with yours?

A. Yes, sir, it was all pretty near.

Q. Well, now, you helped to unload from the "Bristol," did you?

A. No, sir, they wanted us to help them, but I did not see any reason what they were going to make this exchange for, I didn't see any reason, so I thought what's the use of my working and not getting anything for it.

Q. They did not take all of the outfits off?

A. No, sir.

Q. You saw them take your outfit off?

A. My outfit was on the top of it when I looked in the

hold. I saw it was on top, and I watched them for a while, but they handled it careless and I got mad at it, and I went away and I didn't want to look at it.

Q. Did you see them take yours out?

A. Yes, sir.

Q. You saw them taking yours out?

A. I saw them take part of my outfit out.

Q. What did you see them take out?

A. I saw them take some of my bags out. I watched the writing on it.

Q. If they were handling it carelessly, why did not you help them?

A. It was an awfully hard position to work in, and I didn't see any reason why they done it, until I asked the mate of the "Bristol," and he says, they want to lighten up the "Bristol" in front; they took more coal than they ought to.

Q. They had to lighten up the "Bristol"?

A. Yes, sir.

Q. They told you that they would take it back at Alert Bay when they had used the coal up; that they would transfer it back then?

A. No, sir.

Q. The reason they transferred it was because they wanted room in the "Bristol" for the coal?

A. No, sir, that was not the idea. The idea was to—

Q. To lighten the "Bristol"?

A. I understood.

Q. She could not take all the coal they wanted to take at Comox and these outfits?

A. The way it looked to me; that's what the mate told me.

Q. So you went away mad?

A. Yes, they wanted everybody to work on it and some of them fellows says: "Why don't you help us, and

hurry up and get done." I didn't see no reason to go to work and pay my passage.

Q. When you went on the "Eugene" at Comox, she looked like a pretty good boat, didn't she?

A. Yes, sir.

Q. You looked her over pretty well?

A. We looked her all over; we went all over the boat.

Q. No, when you left Comox, the "Eugene" left ahead of you?

A. No, sir—Comox, yes.

Q. You picked her up on the way?

A. We picked her up on the way.

Q. And you both went into Alert Bay?

A. Then we went up that day and that night and the next day until about four o'clock, when we were out of the islands; we were out in the sea then.

Q. About how far was the "Eugene" from the stern of the "Bristol"?

A. I considered it about a block.

Q. You could hear a man talk from one to the other when he called?

A. You could, yes, sir.

Q. And if a man stood on the bow of the "Eugene" and hollered over to the "Bristol," you could hear them all right, could you not?

A. Oh, I should think you could.

Q. Now, you say that there were men holding up blackboards on the "Eugene" with some writing on them?

A. Yes, sir.

Q. That was the reason that the "Bristol" came alongside, picked her up and went into Alert Bay?

A. I beg your pardon, I was downstairs, and I was reading a book; I had laid down for a little bit, and all at once I heard some hollering and some yelling, and I got up then, and I seen the "Eugene" steaming up and the rope was still on her; she steamed off like this (indicating



one side), then she came by the side of us, and there were two men, each one holding a board up like this, with this writing on it; but you want to excuse this, you know I am a German, and that is what they told me and what I could see, a few of the letters, you know.

Q. She came nearer to you with that board?

A. She came by the side of us.

Q. Then it must have been pretty rough weather, so that you could not hear?

A. No, sir, the weather was not rough at all.

Q. How was it that she had to steam up to you and put writing on the blackboard, if you could ordinarily hear from one boat to the other?

A. I was surprised myself.

Q. Could not see any reason for that.

A. No, sir, not at all.

Q. Must have been blowing then?

A. After the boys came on our boat, after we were in Alert Bay, we inquired about it, and one of the boys says, "What is the use of holding up these planks? If you fellows did not want to stay on the boat, why didn't you say so; we would have been willing to exchange places." They were all sick, you know; they said that the sea was so heavy they all got sick, but I did not; it was my fifteenth trip, so I did not see no sea at all, you know.

Q. You have been at sea to Australia and South Africa?  
A. Yes, I was to Australia.

Q. Fifteen times you have been over the ocean?

A. Yes. I worked my passage from Australia to England; it took me 124 days.

Q. Before the mast?  
A. Yes.

Q. So that you know a good deal about shipping?

A. Yes, sir.

Q. You went over on the "Eugene"?

A. I was not at that time.

Q. She was all right?

A. Yes, that is what I supposed; that's what I told McFarland.

Q. That was at Comox?

A. At Alert Bay. I did not want to sign that paper at all; I told McFarland, I says, "Select other people; I am willing to go."

Q. You were willing to go on?

A. I was willing to go on with the "Eugene" and do duty as well as those fellows that had to get out.

Q. Now, who was it that asked you to go on the "Eugene" as watchman at Alert Bay?

A. The secretary of the committee.

Q. He was taking charge of the matter for the committee?

A. Mr. Van Ness.

Q. The committee was taking charge of that matter, the committee for the passengers?

A. No, it was like this: We could not very well make out of course, we could not understand, in the first place, when the "Eugene" left us in Victoria, and then, furthermore, we could not understand very well what the reason was because it was kind of kept a secret, what the reason was that she broke loose on the coal bunkers in Comox, so Mr. Van Ness said at a meeting, "We don't know what to do at all, if Mr. McFarland will go and leave us, which he thought he would, and what we are going to do; we had better go to work and watch the "Eugene" and keep a good watch, so that we know what is going on and don't let anybody off the boat, and don't let anybody on the boat until we know what Mr. McFarland, as representer of the expedition, is going to do in that matter.

Q. The fact is, you had begun to lose confidence in these people, hadn't you, all of you?

A. Well, of course, after—

Q. They were going on in this mysterious way?

A. Yes, sir.

Q. Would not tell you why the "Eugene" broke loose from the "Bristol?" A. Yes.

Q. You all got tired of that? A. Yes.

Q. You said, we will take the matter in our own hands?

A. No, we did not say that; we only was going to see so that we would have witnesses to prove if something were to go on wrong, which we considered wrong.

Q. When the committee sent you over on the "Eugene," they told you what they sent you there for, did they not?

A. Well, they told us to keep an eye on everything that was going on.

Q. All the time she was in Alert Bay?

A. No, not all the time, we were relieved.

Q. Yes, but somebody was on her while she was in Alert Bay?

A. Yes, sir.

Q. For the purpose of watching her?

A. Yes, sir.

Q. You have not got a copy of this release that you signed with the "Bristol"?

A. No, sir, Mr. Johnson has got it; I think he can get it.

Q. Johnson was the man, then, that presented this release? A. Yes, sir.

Q. He was the purser of the "Bristol"?

A. Yes, sir. We did not know anything about Johnson at all in the question, not a word about him, but all at once, when he came back and went in Alert Bay, and we were talking to the captain as to what we were going to do, all at once this purser came up, this Johnson, as representer of the "Bristol."

Q. Then you all had a meeting about the release, before you signed it, I suppose?

A. Yes, sir.

Q. The ninety passengers?

A. Yes, it was called by Mr. McFarland.

Q. And after you all had a meeting about it you came to the conclusion that you would sign it didn't you?

A. On the request of Mr. McFarland and this other captain, Mr. Lewis.

Q. So that you all agreed to sign it in the meeting, you were not going to sign it—one of you would not sign it unless the rest did?

A. One did not sign it and the purser told us that if one failed to sign it, he will turn off and go to St. Michael. And so they worked on that poor fellow for pretty near six hours—they were going to throw him overboard and was going to hang him up, and was going to force him to sign it, and he did not sign it.

Q. The other passengers wanted him to sign?

A. Yes, they wanted him to sign.

Q. What was his name?

A. He gave me his address; his name is N. M. Witt. He lived in the New Western Hotel on Third avenue.

Q. How does he spell it?

A. He has put it down here himself.

Q. That is "W. W. Wert."

A. Yes.

Q. Did he tell you where he came from?

A. No, sir.

Q. Mr. McFarland told you then that the "Bristol" had fulfilled her part of the agreement in taking you that far or was ready to fulfil her part?

A. I beg your pardon, Mr. McFarland did not take no personal interview at all; what he had to say he always called a meeting you know, and put that in front of the body.

Q. Then let them act as they would?

A. Told them simply how he felt about it.

Q. Well, after you had all that put before your committee, and you probably had another meeting of the passengers, you then decided to go to Victoria, did you not?

A. Mr. McFarland always was introduced to the meeting; he was always present at the meeting; of course, we did not want to do anything without having Mr. McFarland there, as he was introduced to us as manager of the "Eugene," and we didn't want to do anything without his knowledge.

Q. His wife was along too, was she not?

A. Yes, sir.

Q. She was a passenger, was she not?

A. That's the way I looked at it, so was his boy.

Q. She and McFarland and the boy all signed this agreement, didn't they?

A. I don't know whether the boy signed it.

Q. McFarland and the wife signed it?

A. Yes, sir.

Q. Just like any other passengers?

A. Yes, sir, just like any other passengers.

Q. Now, you bought two tickets from this man Gould?

A. Yes, sir.

Q. Besides the one which is placed in evidence here, there was another, which was taken up on the "Bristol?"

A. Mr. Gould gave me two tickets, and he told me that the way I understood it was this: That I had my tickets all right enough for the trip, and when I came over, that was the understanding, and when I came over to Victoria, I seen so many different kinds of tickets. Now, there were people from Portland and people bought tickets in Victoria, and had different tickets altogether, and then by talking around I went up to see Mr. Davidge, and he says, "How is that? That is so funny, so many different

kinds of tickets." "Well," he says, "of course, you have got to get these tickets exchanged," and he told us to come up at a certain time and get another ticket for the "Bristol," and then I got this little slip in exchange for the ticket.

Q. That is the one in evidence here?

A. No, beg your pardon,

Q. That is the "Eugene" ticket?

A. That is the ticket I got from Seattle, and this little slip I got exchanged for my other ticket, that I received in Victoria.

Q. The purser takes the ticket up, don't he?

A. Yes, sir.

Q. Did you ever ask Johnson for the ticket?

A. No, sir. There is quite a lot of people did not want to give up their ticket and they did not.

Q. I show you this ticket here, issued apparently to F. M. Lyon; was that the kind of a ticket you had on the "Bristol" and gave up to the purser?

A. To say the truth, I could not say if it is the same kind of a ticket or not.

Q. It looked like it, didn't it? It was the same color?

A. It is too long ago; I could not recognize this ticket; that was simply a ticket like this.

Q. Do you remember what was on it?

A. I read the ticket. But it was too much—you know I'm German, I could not very well get along.

Q. But you had that ticket?

A. I read the ticket.

Q. You had that since you saw the sign down here at Gould's office, did not you?

A. I exchanged it for a ticket in Victoria.

Q. But the ticket you had in your pocket, have you seen that since you saw the sign down there in Gould's office, the little sign that you testify about?

A. Well, this was the ticket that was exchanged in Victoria; I did not see that sign afterwards.

Q. No, but you remember all there was on that sign down there, don't you?

A. Well, I just remember, I could not really—I knew it was for the trip, you know, but I could not—this was a ticket two feet long and one foot wide; I could better see what I saw on that, because there is too much on the small one.

Q. Does your memory depend on the size of the thing that you see?

A. Less letters; there was only a few letters on that you know.

Q. Do you remember all there was on that?

A. Well, I do not remember all that was on it.

Q. What you told on your first examination was not all that was on there then, was it?

A. Well, it was all what I understood was on it; it was the understanding that they said that I could secure a ticket there for St. Michael and Dawson City.

Q. That's all it did say?                      A. Yes, sir.

Q. Was that all that you saw on that sign, that you could get a ticket from that office from Seattle to St. Michaels and Dawson City.

A. Yes, sir.

Q. Now, did not that ticket that you got over there—you took your ticket up to Davidge & Company, did not you, and Davidge signed it?

A. I got a ticket which was signed all right; it seems to me a ticket I got was a little longer than this is.

Q. At all events, Davidge signed it?

A. Yes, I seen the signature underneath.

Q. Looked just like that, didn't it?

A. It's hard to tell.

Q. Now, let's get the straight of this: From Gould,

you got the yellow ticket here, that you put in evidence (referring to Libelant's Exhibit "K")?

A. Yes, that is my ticket.

Q. You also got another ticket?

A. I got a little ticket of about that square (showing); it was a white ticket.

Q. Now, this little square white ticket. When you got to Victoria, you took that up to the office of Davidge & Company?

A. Yes, sir.

Q. And there they gave you another ticket?

A. Yes, sir.

Q. And that other ticket is the one that you gave to the pursuer on the "Bristol?"

A. Yes, sir.

Q. Now, is not that the ticket that Davidge & Company gave you for the little square white ticket?

A. Well, it's what I say. I think really that my ticket was a little longer than this one.

Q. It looked very much like that, did it not?

A. Yes, sir.

Q. You could not say it was not like that?

A. I could not say.

(Paper identified by witness offered in evidence by claimant marked Claimant's Exhibit 1 and returned **here-with**.)

A. (Continuing.) Furthermore, I will state there were people bought tickets in Portland, who did not exchange their tickets at all; they only had one ticket and so on, and then when we got to Victoria we were surprised to see so many different kinds of tickets floating around; I never would have thought of going to work to exchange that ticket if I had not inquired in Davidge's office.

Q. And then Davidge told you that you ought to exchange it?

A. Yes, sir. I think, however, I would not have exchanged it; that it would have been just as well.



Q. Now, your outfit, you say, cost you \$268?

A. Yes, sir.

Q. Where did you buy it?

A. I bought part of it in New York and brought it up here, and I bought part of it in Mr. Kline & Roseberg's, and I bought part of it in a secondhand shop down here on a little side street going down to the wharf, and I bought part of it in Cooper & Levy's.

Q. Well, this outfit was enough to last you for a year and a half?

A. Yes, sir.

Q. It was not perishable stuff, was it—it was stuff that would last?

A. Oh, yes, of course, it would last.

Q. Now, in Victoria, how much customs duty did you pay on it?

A. We did not pay no customs duty on it at all.

Q. How much did you get for that when you sold it?

A. I got for the three outfits; I bought my two partners' outfits out; they were out of money.

Q. You bought your two partners out?

A. Yes, I got for the whole outfit \$185 for the three of us. Of course, we didn't have no money to come back here to Seattle.

Q. What were their names?

A. There was Baker and Marcy.

Q. They were partners with you in this whole transaction?

A. Well, we run together, you know.

Q. You were going to go into partnership up there in whatever you got?

A. No, sir.

Q. You did have money then?

A. Well, I had borrowed the money from Mr. Frieze in Victoria.

Q. You borrowed the money from him?

A. Yes, sir.

Q. Was he a man you knew before?

A. No, I made his acquaintance in Victoria.

Q. How much money did you borrow from him?

A. I borrowed \$100.

Q. So that you could buy these outfits?

A. Yes, sir, and gave him the papers so that I could return the money.

Q. Well, you borrowed this money the \$100, bought the outfits, and then you sold the whole three outfits for how much?

A. \$185—I beg your pardon, that was the groceries.

Q. What did you do with the rest of the stuff?

A. Well, the rest I kept.

Q. You have still got that?

A. No, they kept it.

Q. You only bought their groceries?

A. Their groceries—that is all. Mr. Baker went up to Copper river and Mr. Marcy went home. He was short in money; he sold as quick as he could, so he sold his clothing—he sold that for to keep himself going.

Q. Now, you got back there at Victoria, early in September, didn't you?

A. Yes, sir.

Q. There were other boats still going up to Alaska, were there not?

A. Not that I know of.

Q. There were other people still going into Alaska, over the Dyea and Skagway trails?

A. Yes, sir.

Q. Lots of them, were there not?

A. To go over across.

Q. When you got back here to Seattle there were still a good many people buying tickets and outfits to go up there, were there not?

A. Oh, yes, there were some of them.

Q. Did you try to sell your outfits to these people?

A. Yes, sir.

Q. To whom did you finally sell them.

A. Oh, there were several parties I tried to sell to at the hotel.

Q. Did you sell them to them?

A. No, sir.

Q. Where did you finally sell them?

A. Well, after it was on the wharf for four days, I went over to inspect it, and it was damp weather like today, and the rats had eat holes in it, and I went back to Cooper & Levy where I bought it and offered him to take it back.

Q. He would not pay you as much as you got for it because it was not in good condition?

A. Oh, it was not in A No. 1 condition; it was just about the condition when we left.

Q. I thought you said that the rats had eaten into it?

A. Well, of course, that didn't do the goods any damage, you know. It was not damaged by water or damp weather.

Q. Did you try anybody else besides Cooper & Levy?

A. I tried several parties, outfitters.

Q. They would not, any of them, give you anything for it.

A. Well, they said this was not the stuff they wanted; they wanted other stuff, and then they wanted this and then they wanted that, and wanted stuff I didn't have, and what I had, they didn't want.

Q. What have you been doing since you came back from Victoria?

A. Nothing; I worked for one week.

Q. Here? A. Yes.

Q. What at?

A. Making cigars. I tried to get work, but it is impossible to get any work here.

Q. What other kind of work did you try to get?

A. Oh, any kind.

Q. Tried all around?           A. Yes.

Q. Could not get any?           A. Yes.

Q. Tell me some places you tried.

A. Well, of course, I did not want to try to get work which I cannot do, going out lumbering or that kind of work. I ain't used to that kind of work.

Q. Tell me some one you tried to get work from?

A. I inquired around wherever I thought there was a chance.

Q. Tell me some store or some lumber mill or some person that you went to to try to get work.

A. I had a conversation a couple of days ago with Mr. Levy, and Levy told me that if I could go to work and sell outfits that I could do so, and then I went to see Messrs. Kline & Rosenberg, and they said, "Well, Jacobi, if you want to make a few dollars, we will give you a chance to work for us, selling outfits."

Q. That is just a little while ago; just a few days ago?

A. That is weeks ago. But I tried to do it, but you cannot sell anything; the people are all too stupid here.

Q. The people are all too stupid; you could not sell anything?

A. They want to have their own ways, and as soon as you pitch in and want to get them some place, they think you are going to swindle them.

Q. Did you try to get any labor?

A. Well, I worked down there for eight days in that cigar shop. I had my back against a big stove, but my feet were nearly in the street—one side was roasted while the other was nearly froze to death. I worked for a week and I had to give it up.

Q. Where is that?

A. There is a little cigar store next a little shoemak-

er's store. This was a couple of weeks ago.

Q. Well, you took some money along with you up there?

A. No, sir, I had just \$45 left.

Q. What security did you give this man in Victoria who made this loan to you?

A. My word.

Q. Your word?

A. Yes, he offered it to me, and I told him my plans, and he says, "Whenever you want any money, I will give it to you; I will help you out."

Q. He was a resident of Victoria, was he?

A. Yes, he owns the Queen's Hotel, where we used to board.

Q. You never met him before you were up there this time?

A. No, sir.

Q. You just knew him while staying at his hotel—he is a German and you are a German?

A. Yes, sir.

Q. He said, "Here's \$100 if you want to buy the outfit"?

A. He did not say that. I told him all about it, and I had plenty of stuff up there, and I told him I was going to give him my watch, and I had a rifle, and I had a shotgun, and I had a pistol, and I had an instrument up there that cost me \$50. And I says, "I will let you have that all for security, until I am able to pay you back." He says, "That is not necessary, Jacobi," he says, "I will take your word for it and here's the money."

Q. After you got back to Victoria, did you ever go to see Mr. Gould or Mr. McGuire, and tell them that you had signed this release to the "Bristol," under protest?

A. No, sir.

Q. Did you ever make any claim against the "Bristol" or against the owners?

A. We did when we got back, when this committee

started in an action, they engaged lawyers and other people engaged lawyers, and we engaged lawyers, by paying 50 cents and a dollar apiece, and tried to do the best we could, and then the committee started to go to work, and the committeeman left us, and some bought horses and some went up to the Stickeen, some went to Dyea, and within a couple of days they were all scattered.

Q. These men who went to the Stickeen river and Dyea, they were going over to Dawson City, were they not?

A. That was their intention.

Q. So that from that time, until you began this suit, you never said anything more about the release of the steamer?

A. No, sir, because they all said that we shall leave it to the committee and stick to the committee, and we stuck to the committee until we were struck by the committee.

#### Redirect Examination.

Q. (By Mr. HOGAN.) Now, as to the signing of that release by McFarland, do you know on whose behalf he signed that, whether on his own or on behalf of any other person?

(Objected to by proctor for claimant as incompetent, irrelevant, and immaterial.)

A. He signed that release in his own behalf; that's the way it seems to me.

Q. I will ask you whether or not the Portland and Alaska Trading and Transportation Company signed that release.

A. If Mr. McFarland signed that release, consequently, as the manager of that Portland Transportation Company, it must mean the company.

(Proctor for the claimant moves to strike out all of the testimony of the witness in regard to any conversations or representations or saying or acts of McFarland which he has testified to, or of McFarland, McGuire, Gould, or Lewis, as no proper basis has been shown for such testimony, no connection of these people with the claimant or the steamer "Eugene." At this time, further proceedings were adjourned until 10 o'clock A. M., November 15th, 1897.)

Seattle, November 15th, 1897. 10 o'clock A. M.

Continuation of proceedings pursuant to adjournment.

Mr. C. W. GOULD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (By Mr. HOGAN.) What is your business, Mr. Gould?

A. I am a dealer in typewriters.

(Proctor for libelant desires the record to show that he is examining this witness as an adverse witness.)

Q. Have you any other business in connection with that?

A. Well, no.

Q. Have you had of late?

A. Not since some time in August.

Q. Do you know of the steamship "Eugene?"

A. I do.

Q. Of the "Bristol?"

A. Yes, sir.

Q. Do you know of their attempted voyage to Alaska last August?

A. I do.

Q. Did you have any connection with that?

A. Yes, I acted as agent in selling tickets.

Q. What place?

A. 619 First Avenue, Seattle.

Q. Under what name—C. W. Gould & Company?

A. No, sir.

Q. Just C. W. Gould?

A. C. W. Gould

Q. You are the Mr. Gould testified to by the witness Jacobi, and Ruff, to the effect that they had bought their tickets of you, I presume?

A. I remember of Mr. Ruff buying a ticket of me; the other party I do not recollect. I presume that I sold the other party a ticket; if I did his name will appear on the stub of the ticket but I do not place him in that connection.

Q. By whom were you employed in that business?

A. As near as I am able to make out, I was employed by McGuire & Davidge.

Q. Who is McGuire and what relation does he bear to the Portland and Alaska Trading and Transportaion Company, if you know?

(Objected to by proctor for claimant until the witness states that he knows.)

Q. I ask him if he knows.

A. I do not know.

Q. You had dealings with him, he representing the Portland and Alaska Trading Company?

(Objected to by proctor for claimant as leading.)

Q. In what capacity did he assume to represent that company in these dealings?

(Objected to by proctor for claimant, because any such statements to the agent cannot establish as against the principal the agency.)

A. Why, I believe P. H. or H. P. whichever his initials may be, was president of that company; that was my recollection.

Q. And W. W. McGuire, what relation did he bear?

A. If I recollect correctly, he was secretary.

Q. And McFarland, what were his initials?

A. E. B., I believe.

Q. What relation did he bear to the company?

A. I believe he was manager.



Q. Did you have any stationery or printed matter furnished you by them?      A. No, sir.

Q. Did you see any of their letterheads or business cards?      A. I did not.

Q. Who was present when you were employed for the purpose of selling tickets on this voyage?

A. I believe Mr. Giles was in the office at the time with H. P. McGuire, and H. C. Davidge came in together and asked me if I would act in the capacity of agent in selling tickets.

Q. You made a contract with them, did you?

A. I did not, no, sir; only verbal.

Q. You made a verbal contract at that time?

A. Yes, sir.

Q. Whereby you were to act as agent for the selling of tickets for this voyage?      A. Yes, sir.

Q. What was said as to the amount to be charged passengers for the tickets?

A. We were to charge them \$300 from Seattle to Dawson City.

Q. And what privileges as to baggage and freight was that to include?

(Objected to by proctor for claimant as leading.)

A. That was to include 1500 pounds, as I understood it, or three-quarters of a ton, measured. Now, there is a difference between 1,500 pounds avoirdupois and three quarters of a ton measured; well, that matter was threshed out between the parties before the sailing, and it was finally agreed that 1,500 pounds avoirdupois should govern.

Q. What date was this that you were employed by them in the capacity of agent?

A. Well, now, I do not recollect exactly; it was somewhere about the 14th of August, I think.

Q. State whether or not any bills were gotten out and distributed and circulated, advertising this trip.

(Objected to by proctor for claimant as leading.)

A. Yes, sir, there were cards printed on ordinary paper about the heft of thick letter paper.

Q. Have you any of these cards?

A. I have not.

Q. What was done with these cards—were they put up at any place?

(Proctor for claimant objects to this line of inquiry as incompetent, for the reason that no authority has been shown in this witness to bind the owners of the "Eugene" or the claimant.)

Q. I ask you if they were distributed or put up anywhere?

A. Yes, they were handed to outside rustlers to give to passengers or prospective passengers.

Q. State whether or not these cards were printed with the approval of the McGuires.

A. They were.

Q. Were they submitted to them?

(Objected to by proctor for claimant as incompetent until the card is produced. Proctor for claimant proposes to show that the cards have been destroyed and will offer secondary evidence as to their contents.)

Q. Now, you may go on and state what part the McGuires or McFarlands had in the preparation of these advertisements—what part they took in it and whether they were submitted to them.

A. They were written by me and submitted to W. W. McGuire; I believe he was in the office at the time. He stated that he would have to have some cards for these outside rustlers to hand to passengers, and wanted me to get up a form. So I wrote out a form and submitted

to them or to McGuire one, whoever was in the office at the time, and he told me to get them printed.

Q. Then you had them printed.

A. I had them printed, yes.

Q. Was one of them posted up in your office or about the office anywhere, if you remember?

A. I do not recollect of any that were posted up at all. They were little bits of cards about three inches by two and a half, something like that—small cards.

Q. I will ask you if this is one that you refer to?

A. Yes, that is the one.

(Card offered in evidence by proctor for libelant. Objected to by proctor for claimant as incompetent, and on the same ground heretofore stated; that there is no authority shown for the issuance of this by the claimant or owners of the steamer "Eugene." Paper marked Libelant's Exhibit "M" and returned herewith.)

Q. I will ask you whether or not there was any other large bill printed about a foot wide and two feet long.

A. Yes, sir.

Q. I will ask you whether or not that was printed with the knowledge and approval of the Portland and Alaska Trading and Transportation Company or the McGuire's?

(Objected to by proctor for claimant as leading and calling for a conclusion of law.)

A. It was printed with the knowledge of W. W. McGuire, and I think with the knowledge of H. P. McGuire, although he may not have been here at that time.

Q. How was that prepared, who prepared it and to whom was it submitted?

A. I do not recollect the gentleman's name who prepared the card; I think it was prepared by an old gentleman on Cherry street, between Second and Third.

Q. Who employed him for the purpose?

A. I believe W. W. McGuire; that is my recollection.

Q. State what was done with that bill after it was printed as to its distribution.

A. It was nailed upon my bicycle rack.

Q. Where is that with reference to the entrance to your office?

A. It is right by the side of the door, in front of the window.

Q. Now, do you know anything about any advertisements or publications having appeared in the daily papers of this city with reference to this voyage?

A. Yes, sir. There were several barnstorming articles in the "P. I.," what would commonly be called 'jollies' by some people; that is what the McGuires called them.

Q. I now hand you Libelant's Exhibits from "B" to "J." I will ask you if you recognize these as some of the articles printed matter, newspaper matter, that were so published.

A. Here is one in particular, where it says "Secretary W. W. McGuire, the resident agent Gould of the company, were about the busiest men in Seattle yesterday, attending to the wants of passengers, and looking after the new arrivals who are booked for passage on the "Bristol." That is what I referred to as "barnstorming" As a matter of fact that day we had very little business.

Q. That is Exhibit "D" that you have read from. Now I will ask you if you have examined all these papers, and if you have, whether you can state whether these are the articles that you refer to as appearing in the "P. I."

A. Yes, sir. Let me state here. There is a list of passengers, and some of the passengers came in and objected to this list, as it was misleading on account of quite a number of the passengers having been booked at Port-

land, and it was made to appear that the passengers were all from Seattle.

Q. You speak of Exhibit "G" now?

A. Yes, sir.

Q. Now, I will ask you to explain how these articles came to be published in the "P. I." of this city, by whom they were written, if you know, and at whose request?

(Objected to by proctor for claimant unless the witness knows of his own personal knowledge.)

A. I saw some of the articles that were being prepared by W. W. McGuire. Others were written by a gentleman by the name of Semple, at Mr. McGuire's request, and they went over the matter in my office there a number of times, approving and disapproving it, before it was submitted for publication. That's all I know about it. McGuire, however, asked me several times to assist him in writing up that matter, but I did not think that it was in my line, and did not wish to have anything to do with it.

Q. Who paid Semple for preparing this, if anybody?

A. I don't know who paid him.

Q. I will ask you whether or not he got passage on this voyage for writing.

(Objected to by claimant as leading.)

A. He had passage on the voyage, and I understood at reduced rate on account of services performed and to be performed.

Q. (By Mr. PETERS.) That is what you understood from some one else.

A. I understood it from W. W. McGuire.

(Proctor for claimant moves to strike out the testimony as hearsay.)

Q. (By Mr. HOGAN.) W. W. McGuire told you so?

A. Yes, sir, he did.

Q. Now, do you know whether or not the "P. I." Company was paid anything for the publication of these articles?

A. I paid the "P. I." \$100, and took a receipt for it.

Q. For the publication of these articles?

A. Yes, one payment. I don't know what was paid subsequently.

Q. State whether or not the McGuires had knowledge of that payment or whether it was by their request.

A. Yes, sir, they had. They requested me to pay the bill, and I refused until I had authority for the disbursement from F. C. Davidge & Company.

Q. Then what money did you pay out—where did you get the money that you paid with?

A. I received it from the sale of tickets.

Q. That you received a receipt for that payment?

A. I have.

Q. Have you that receipt with you?

A. No, sir, I have not.

Q. Where is it? Can you get it?

A. Yes, sir, it is in my safe at the office.

(Receipt referred to by witness subsequently produced, to which is attached a telegram of which the following are copies:

(On Pacific Postal blank.)

Victoria, B. C., Aug. 19th, '97.

C. W. Gould, Seattle, Wn.

Please pay the "Post-Intelligencer" one hundred dollars immediately account advertising. Your form local ticket approved.

F. C. DAVIDGE & CO.

Seattle Washington, Aug. 19, '97.

C. W. Gould, Acct of F. C. Davidge & Co.

To "Post-Intelligencer" Publishing Compnay, Dr., on acct of adv., \$100.00

P. I. Co.

Per J. Ira Hawley.

(Proctor for libelant offers in evidence the receipt and telegram as above. Proctor for claimant objects to the receipt as incompetent, for the reason that there is no connection shown between the claimant and the parties to this transaction.)

Q. I will ask you if you have any telegrams or letters in your possession between yourself and other persons, relating to either of these steamers, concerning this transaction, and if so, I will ask you to produce them.

A. I have. Here are some that are addressed to McGuire and some to myself.

Q. I will ask you where these were received.

A. In my office.

Q. And at what dates? At the dates they purport to bear?

A. Yes, sir.

Q. I will ask you whether or not they have been in your possession ever since.

A. Yes, sir.

(Proctor for libelant offers in evidence six telegrams produced by the witness. Proctor for claimant desires to ask some preliminary questions as to the competency of the telegrams.)

Q. (By Mr. PETERS.) This telegram from McFarland to H. P. McGuire dated August 23, 1897, have you got the answer to that telegram with you?

A. I have not.

Q. Or a copy of the answer?

A. That was addressed to McGuire?

Q. Yes. A. No.

Q. There was an answer to it?

A. I could not say.

Q. Where did you get that, then?

A. Well, McGuire left it on my desk.

Q. McGuire left it on your desk and you picked it up?

A. Yes sir.

Q. Did you have McGuire's authority for the use of this?

A. He turned it over to me. The message was opened by him, and handed over to me; all the messages there were left in my care and put in my safe.

Q. Where was McFarland at that time?

A. I don't know.

Q. Where did this telegram come from?

A. It was dated at Portland.

Q. That is, McFarland must have sent it from Portland?

A. Yes, I think so.

Q. You have not the answer to the telegram?

(Proctor for claimant objects to the introduction of this telegram as being fragmentary evidence, besides the further objection to the introduction of all these telegrams and letters as being incompetent, on the ground that no connection is shown between those who signed them with the owners or claimants of the steamer "Eugene.")

Q. Now, this telegram from Victoria, B. C., August 19th, from F. C. Davidge & Company to W. W. McGuire, where is the answer to that telegram?

A. If there is an answer at all, it must be with the Postal Telegraph. I do not know whether it is answered or not.

Q. It was received at your office, was it not?

A. Yes sir.

Q. Do you keep a copy of your answers there?



A. No, sir, I did not.

Q. It doubtless was answered, was it not?

A. That I could not say.

(Proctor for claimant objects to all of the telegrams as they all appear from the face of the telegrams to require answers, and the evidence is not admissible, unless they produce the balance of the communications. Papers marked Libelant's Exhibit "N," "O," "P," "Q," "R," and "S," and returned herewith.

Q. (By Mr. HOGAN.) You have identified these letters? A. Yes, sir.

(Proctor for libelant offers in evidence letter from F. C. Davidge & Company to C. W. Gould, under date of September 24th, 1897; also letter from F. C. Davidge & Company, dated Portland, Oregon, August 17th, to C. W. Gould; also letter from F. C. Davidge & Company, Victoria, dated August 20th, to C. W. Gould.

Q. (By Mr. PETERS.) Mr. Gould, this letter purporting to be from Davidge & Company addressed to you from Victoria, B. C., on the 21st day of September, 1897, says, "We are in receipt of your favor of the 22d, and will of course be glad if you are able to recover the \$35 from the McGuires"; have you got your letter of the 22d to which this is the reply? A. No, I have not.

Q. Have you got a copy of it?

A. I do not think I have.

Q. Do you not keep letterpress copies of the letters which you write in your office?

A. The majority of them. Some I do and some I don't.

Q. What makes you think you have not got these?

A. Well, I am not positive that I have not; I may have.

Q. This letter of the 20th of August, 1897, purporting to be from F. C. Davidge & Company to you, says, "We

note you paid the "P. I." the \$100 which was in order." That must have been in answer to a letter of yours informing them, among other things, that you had paid the \$100 to the "P. I.," is not that true?       A. Yes, sir.

Q. Have you got that letter?

A. I presume I have a copy of it; I am not positive of that. It may have been a telegram. In that case, I did not keep copies of telegrams.

(Proctor for claimant objects to the introduction of these letters on the ground that they are incompetent, and on the further ground that there is no showing of authority in Davidge & Company to bind the owners or claimant of the "Eugene"; and further that the signature of Davidge & Company is not proven; and further that the letters show that they are in answer to other letters from the witness to Davidge & Company, if genuine at all, and unless these other letters are produced, to which these are answers, or which were answers to them, we object to these as fragmentary testimony.)

Q. (By Mr. HOGAN.) I desire to ask one or two questions in view of the objections. Do you know the signature, Mr. Gould—that is, you had business correspondence with them?       A. Yes.

Q. Other than this?

A. Very little. I could not take my oath that I could recognize the signature.

Q. But you received these letters in the regular course of business?       A. Yes, sir.

Q. Can you identify the signature to these letters of Davidge & Company, according to the signatures to other letters received by you?

(Proctor for claimant objects to the question as incompetent, and in no way tending to prove the genuineness of the signatures.)

A. As far as I am able to judge, the signature is the

same as on previous correspondence. As you will note, one of these letters is dated Portland.

Q. They had an office in Portland?

A. They had a branch office in Portland, consequently the signature by the party signing the letter "G," down there, would not be the same as the signature from the home office at Victoria.

Q. (By Mr. PETERS.) Who is the individual who signs the name Davidge & Company by the name "G"?

A. I think his name is Grear.

Q. Did you ever see him write?

A. No, I never have.

Q. Who is the individual who signed the letters over in Victoria, B. C., under the name of Davidge & Company.

A. I think it is Davidge himself.

Q. Did you ever see him write his name?

A. I never did.

(Proctor for claimant renews his objection as incompetent, the genuineness of the signature not being proven.)

Q. (By Mr. PETERS.) One of these letters that was handed you by Mr. Hogan was in the possession of Mr. Hogan, was it not?

A. Since I came in the office this morning, he handed it to me.

(Papers identified by witness marked Libelant's Exhibits "T," "U," "V," and returned herewith.)

Q. (By Mr. HOGAN.) I will ask you if you recognize the signature of F. C. Davidge & Company to that letter, according to the signature borne by the letters of your correspondence with that firm.

(Objected to by proctor for claimant, for the reason that it will in nowise prove the genuineness of the signature.)

A. The signature to this letter appears to be the same as on the other letters from Victoria, signed by Davidge & Company.

(Paper offered in evidence by proctor for libelant.)

Q. (By Mr. PETERS.) That is the only ground of belief as to its genuineness, because it seems to be on the same sort of paper.

A. The letterhead.

Q. It seems to be the same sort of a signature as on these other letters that have been offered in evidence?

A. Yes, sir.

(Proctor for claimant objects to the introduction of the letter as incompetent, the genuineness of the signature not having been shown, and the witness not appearing to have any knowledge as to the handwriting. We object on the further ground that it relates to other correspondence and to other matters, and the balance of the correspondence has not been produced; and on the further ground that it relates to transactions which have arisen since the commencement of this suit, the letter being dated November 8th, 1897, and it further appears that it is a letter from F. C. Davidge & Company to J. C. Hogan. Paper marked Libelant's Exhibit "W" and returned herewith.)

Q. (By Mr. HOGAN.) I propose to follow this up by another witness. As such agent for this expedition, Mr. Gould, I will ask you whether or not you sold the ticket to Charles Ruff, one of the libelants in this case.

(Objected to by proctor for claimant as leading.)

A. By reference to my stub-book, I can answer that question.

Q. Please do so.                   A. Yes, sir, I did.

Q. On what date?

A. I haven't the date; the tickets were not dated.

Q. Where was that sold?

A. At my office in Seattle.

Q. He paid the passage money?

A. He did, yes.

Q. How much?           A. \$300.

Q. What transportation rights did that entitle him to?

(Objected to by proctor for claimant, for the reason that the ticket is the best evidence.)

Q. What was said as to transportation rights that were to be given him, between what points and as to what freight he would be entitled to carry with him?

(Objected to by proctor for claimant as incompetent.)

A. He was told that he would be entitled to through transportation from here to Dawson City.

Q. (By Mr. PETERS.) Mr. Gould, the ticket which you sold Mr. Ruff had the terms and conditions of the transportation upon it, didn't it?

A. The order for the ticket on the "Bristol," from Victoria to St. Michaels.

Q. Have you got a copy of that order there?

A. I have.

Q. That was what was delivered to Mr. Ruff, when he paid his \$300?           A. That is the order.

Q. For a ticket on the "Eugene"?           A. Yes, sir.

Q. Now, these two papers, that is, the order for a ticket on the "Bristol" and the ticket on the "Eugene," contains the conditions of the transportation; that is it has a stipulation on it as to the amount of baggage and so forth?           A. Yes, sir.

(Proctor for claimant objects to any parol testimony, which attempts to vary the contract contained on the ticket.)

Q. (By Mr. HOGAN.) Between what points would that furnish him transportation, and what baggage or other rights did it give him?

A. It furnished him—we sold the ticket or furnished

a ticket from Seattle to Victoria on the "Kingston," I believe, or the "City of Seattle," the boats running between here and Victoria, I don't know the name of the company operating that boat, but we furnished the transportation between here and Victoria. Between Victoria and St. Michaels we furnished an order on F. C. Davidge & Company covering the transportation between Victoria and St. Michaels. The ticket for passage on the "Eugene" was also given the passengers here, and the order on F. C. Davidge & Company.

Q. Can you tear one out?

A. Yes, I will furnish you one of the orders and mark the stub.

(Proctor for libelant offers the paper in evidence. Paper marked Libelant's Exhibit "X" and returned herewith.)

Q. Can you furnish a ticket to the "Eugene"?

A. I can, but I may be called upon to account for it.

(Witness produces blank ticket to commissioner indicating upon the stub the purpose for which the ticket was detached. Proctor for libelant offers the ticket in evidence. Proctor for claimant objects as incompetent, for the reason that it is not connected in any way with the owners or claimant of the "Eugene." Paper marked Libelant's Exhibit "Y" and returned herewith.)

Q. Now, these two pieces of paper were given to the passengers when they paid the passage money. You mentioned something about furnishing them transportation from Seattle to Victoria?

A. There was a card, a ticket calling for regular transportation, first class passage on the boat between Seattle and Victoria, which was supposed to be a part of the continuous passage.

Q. That was all included and paid for in the sum of \$300?      A. Yes, sir.

Q. I will ask you if you also sold tickets in the same manner for passage in the same manner to Gustav Jacobi, another of the libelants here?

A. Gustof Jacobi.

Q. And Fred M. Lyons?      A. F. M. Lyons.

Q. I will ask you if you also sold him a passage in the same manner?      A. Yes, sir.

Q. What amount did he pay for it?      A. \$300.

Q. On this same voyage?      A. Yes, sir.

Q. And under the same circumstances?

A. Yes, sir.

Q. And W. Cary?      A. W. Cary.

Q. You sold him passage from Seattle to Dawson City on this voyage?      A. I did.

Q. What amount did he pay for it?      A. \$300.

Q. Mr. McKnight?      A. E. W. Knight

Q. What did he pay for his?      A. \$300.

Q. And these received such papers as you gave to Mr. Ruff?      A. Yes, sir, they did.

Q. Now, at the time these tickets were sold, was there any officer of the Portland and Alaska Transportation Company present in your office?

A. I cannot say whether he was present at that particular time or not, but one of the McGuires was there nearly all the time.

Q. Which one of them?

A. W. W. was there the greater part of the time.

Q. I will ask you whether or not when these tickets were sold, the manner of making the voyage was explained to the passengers?      A. It was.

(Objected to by proctor for claimant because the tickets themselves contained the stipulations in regard to transportation.)

Q. Did they make any inquiries as to how the expedition was to reach Dawson City?

A. They wanted a general outline of what they were expected to do.

(Proctor for claimant objects for the reason that the inquiry should be directed to the particular libelants, and not what was said to the passengers generally or out of their presence.)

A. They wanted us to outline the proposition.

Q. How the boats were to sail?

A. How they were to sail and give them all the information that we could in regard to the matter.

Q. And what were they told as to the manner of the sailing of the boats and from what points they would sail?

A. They were told that they were to take the "Kingston" or "City of Seattle" from here to Victoria, where they, together with their baggage, would be placed on board of the steamship "Bristol" which would take in tow the "Eugene."

A. Yes, from that point or the original intention was to sail from Comox with the "Bristol," but that was changed and the "Bristol" came down to Victoria and took the passengers and freight there.

Q. With the "Eugene" in tow?

A. The "Bristol" was to pick up the "Eugene" at whatever point she might be at the time of sailing and take her in tow.

Q. The idea was to pick her up and place her outside of British waters?

A. I believe that was the reason for their not having her in Victoria, was to avoid customs officers.

Q. Now, what were they told as to the delivery of their baggage?

A. They were told to place it on the wharf.

Q. At what place?



A. Yesler wharf, and get receipts in the regular way.

Q. Who was to take charge of it at that point?

A. They were to get receipts from the wharfinger.

Q. Was that to end there?

A. That was to end their responsibility, so far as their baggage was concerned until they arrived at Dawson City.

Q. (By Mr. PETERS.) Mr. Gould, do I understand this was told by you to the passengers generally?

A. It was told by the McGuires and myself, yes.

Q. So that what you have been testifying to, some of it was at times told by you and some of it by the McGuires?

A. Yes, any inquiries to me that I did not understand fully and had not been fully instructed on, I would refer the passengers to Mr. McGuire and he would answer them.

Q. And he would do so sometimes in your hearing and sometimes not?      A. Yes sir.

(Proctor for claimant objects to the testimony of the witness as being at least partly hearsay, and moves to strike out all the testimony of the witness in regard to any conversation or admissions, or letters or telegrams or representations of W. W. McGuire or P. H. McGuire, or E. B. McFarland or Johnson the purser or other parties about which he has testified, no connection having been shown between these parties and those which are competent to bind the owners of the steamer Eugene.)

#### Cross-Examination.

Q. (By Mr. PETERS.) Now, Mr. Gould, you have been a resident of Seattle for a long time, have you not?

A. In the neighborhood of three years.

Q. And your business has been that of selling typewriters?      A. Yes, sir.

Q. Any other business?

A. Well, I was handling safes for the Webb Safe & Lock Company.

Q. As their local agent or general agent?

A. As their local agent.

Q. How long ago?           A. Two years ago.

Q. Your office you say is 619 First avenue?

A. It is now.

Q. In what building?

A. Starr-Boyd.

Q. Was it in that building at the time of the sales of these tickets?   A. Yes sir.

Q. What floor?           A. First floor.

Q. You have stated that Mr. McGuire was the president of the Portland and Alaska Transportation and Trading Company and W. W. McGuire was secretary and McFarland was manager.

A. That is my understanding.

Q. From whom did you understand that?

A. From the McGuires' general conversation in regard to the company and so forth.

Q. You never understood it from anybody else excepting the McGuires or McFarland.

A. I believe that Mr. Greer from Portland, who went up to Victoria during the time that the passengers were being delayed there—he came through here and I believe that he told me that that was the relation they bore to the company.

Q. Who was Mr. Greer?

A. He was Davidge's agent at Portland.

Q. What was Davidge & Company?

A. They were supposed to be the people who had the Bristol.

Q. I am not asking as to that, but I am asking whether it is a corporation or a copartnership.

A. With the McGuires?

Q. Now who constitutes Davidge & Company?

A. I don't know, who the company is, but I have seen F. C. Davidge.

Q. You have seen F. C. Davidge himself?

A. Yes, sir.

Q. Where did you see him?

A. I saw him at the time he came down here to arrange the business.

Q. With you?     A. Yes.

Q. So that it was Davidge who employed you?

A. Davidge and McGuire came in the office together, and they both seemed to be mutually arranging it in some way.

Q. Now, what was your compensation in this matter? (Objected to by proctor for libelant as incompetent, irrelevant, and immaterial.)

A. Four per cent of the passenger tickets.

Q. Of the gross receipts?

A. Gross receipts of the passenger business, I had no percentage on freight.

Q. With whom was that arrangement made?

A. With H. P. McGuire with F. C. Davidge.

Q. Now, you retained that out of the money you received for the sale of tickets?     A. I did.

Q. All moneys you received from the sale of tickets, you have since deposited in banks?

A. Yes, sir.

Q. And you never have had any accounting with the McGuires or the Portland and Alaska Trading and Transportation Company or Davidge & Company?

A. I sent them statements, that is, you might say that I have had an accounting because I itemized everything, I made statements, but they have never checked my vouchers.

Q. To whom did you send that?

A. I gave E. B. McFarland a copy and mailed a copy to Davidge.

Q. How long ago was that?

A. When McFarland was over here, during the time of the sale of tickets, was when I made out my first statement. The last statement or the final account either the copy or the original, was given to one of the McGuires, and the other mailed to Davidge.

Q. About how long ago was that?

A. Well it was after the sailing of the boat, I believe.

Q. About how much did you receive in commissions?

(Objected to by proctor for libelant as irrelevant, and immaterial.)

A. I do not recollect.

Q. About how much?

A. About five hundred dollars I think.

Q. Do you remember what appeared on that poster that was on your bicycle rack?

A. No, I do not.

Q. Did you get a copy of it?

A. No, sir.

Q. Did you get that yourself?

A. No, I did not keep it.

Q. Do you recollect what became of it?

A. It was destroyed with a lot of other rubbish there in the office at the time we cleaned it up to get it out of the way.

Q. Has anybody ever inquired about it since?

A. Not to my recollection.

Q. These advertisements in the newspapers that you refer to you say they were all in the Post Intelligencer?

A. Why, all that I noticed I believe were.

Q. Well, were there any other advertisements besides those which you have offered in evidence here?

A. That I do not know.

Q. Do these clippings which you have offered in evidence here include all the advertisements in that time?

A. That is more than I can say. I do not often read the advertisements—I did not often read all the advertisements that were in the “P. I.” I was very busy at the time.

Q. The only one that you can recollect reading is this one that you refer to which says that W. W. McGuire and resident agent Gould of the company were about the busiest men in Seattle yesterday?

A. Yes, I thought that was a pretty big “jolly” at that time, because we were not very busy that day.

Q. That is the only one you really recognized as having seen in the newspaper and was written by one of the McGuires? A. I can recognize others there.

Q. Just point to some others and tell me who wrote them.

A. I think this one marked Exhibit “G”; I think that was written by McGuire and Semple.

Q. Who was Semple?

A. He was one of the passengers.

Q. What makes you think it was written by McGuire and Semple?

A. Because I remember he was asking me for a list of the passengers, trying to get a list of the passengers and a list was made up for the “P. I.”

Q. Did you actually see the article before it was published? A. I heard them read it.

Q. Now, these letters and telegrams which you have offered in evidence as being received from the McGuires and McFarland, purport to be received from Davidge & Co. Have you got the letterpress copies of all the correspondence that went from you or from the McGuires through your office, to Davidge & Co.?

A. I do not know whether I have or not; some might have been telegrams. I was very busy at that time and worked early and late, and hardly had time to write any letters, and if I did, the chances are that I may have just thrown it in an envelope and sent it without copying.

Q. You keep letterpress copies in your office?

A. I do, yes, sir.

Q. Well, will you be kind enough to bring up the letterpress copy books after lunch in which you would have any copies of letters to Davidge & Co. or with either of the McGuires, or McFarland or Johnson, or any matter relating to the "Eugène"?

A. Yes, I can bring them up, if required to do so. I do not like to have the books put in evidence for I need them.

(At this time hearing adjourned to 1:30 P. M.)

Afternoon session. Continuation of proceedings pursuant to adjournment at 1:30 o'clock.

Mr. C. W. GOULD, on the stand for further cross-examination.

Q. (By Mr. PETERS.) A great many of these tickets were sold through brokers, were they not?

A. Why, through outside men that were appointed by Mr. W. W. McGuire and H. P. McGuire.

Q. Well, these men got a commission on each of them they sold, did they not? A Yes, sir.

Q. They were men who might be called ticket brokers or scalpers? A. I called them outside rustlers.

Q. Now, about how many of these tickets do you suppose, of the three hundred tickets, were sold in that way?

A. I do not know; it shows in my report.

Q. Well just an estimate, could you give what proportion?

A. I presume the commissions would amount to something in the neighborhood of five hundred dollars, maybe more.

Q. Well, how much would that indicate, then?

A. They gave them six per cent on whatever business they brought in.

Q. So that each ticket selling for three hundred dollars, six per cent of the gross amount of tickets sold by the outside rustlers would be represented by the five hundred dollars—that is your idea?

A. That is an estimate.

Q. Now, do you know whether a ticket was sold to Ruff or Jacobi by outside rustlers or whether they were sold in the office?

A. I can tell by that statement; my stub, I think, will show. I can tell by my statement in this letter-book. (Examining letterpress book.) H. C. Smithson received \$18 commission.

Q. How about Jacobi?

A. I do not think there was any commission paid on Jacobi.

Q. But the ticket to Ruff was sold by outsider rustlers and the commission paid?

A. Yes; that was H. C. Smithson. I furnished all the tickets and received my commission on them, too.

Q. Now, all of your statements of disbursements made and amounts received for the sale of tickets were rendered by you to Davidge & Company, in Victoria?

A. Also to the McGuires.

Q. You do not find, then, any copies of letters which you sent in answer to these letters which you have introduced in evidence, that of August 17th?

A. What does that refer to—that letter does not state it is in answer to any of my letters, and I do not think I had written these people prior to that time.

Q. You do not think that was in response to any of your letters—that was a letter from Portland, August 17th? A. Yes, sir.

Q. Now, have you got that letter of the 22d of September to which Davidge has apparently referred in the letter of September 24th? A. No, sir.

Q. You see that he says in that that they have received your favor of the 22d, and will be glad if you are able to recover the thirty-five dollars from the McGuires. What was the controversy that you had with the McGuires?

A. Why the McGuires went down to the agent of the steamboat company, to the Kingston, and secured berths for 35 passengers, agreeing to pay for them, and I was trying to protect Mr. Pope, who is cashier of the steamboat company, by deducting that amount from the receipts for the tickets.

Q. And Davidge & Company would not have it?

A. Davidge & Co. thought that that was a matter that McGuire ought to take care of.

Q. So they insisted on your paying them \$35 which you held out?

A. No. They had drawn out the \$35.

Q. You wanted them to return it?

A. I wanted them to return it so that I could pay that bill.

Q. They insisted on retaining it and they did retain it? A. No, they returned it to me.

Q. Now, they say here that they are sorry to see that they (the McGuires, I suppose) are trying to make trouble for you? A. Yes, sir.

Q. He says further that it is the McGuire people who should furnish the bonds that you require. What was that?



A. Several of the passengers or the McGuires themselves, I think, came to me and said that the passengers intended to have all those who participated in the sale of tickets and that were in anywise interested in this expedition, in the way of agents, arrested for embezzlement. Well, I knew if I was arrested on that charge, along with the rest of them, I would either have to go to jail or furnish bonds and I asked Davidge, in case that was done, if he would go on my bond, and that is what that matter refers to.

Q. Now, the passengers did complain to you and to others who had sold tickets and had been instrumental in getting them to take this trip on the "Bristol," they did make complaints to you of their treatment, did not they?

A. There were several of the passengers in to see me, but there was none of them that said they blamed me in the least.

Q. But they did make complaint of the agents generally, who sold them the tickets?

A. Yes, they seemed to be making complaints of Davidge and McGuire.

Q. There was a good deal of outcry among them against Davidge and McGuire? A. Yes, sir.

Q. Of their unfair treatment in having bought these tickets and not having completed the trip?

A. Yes, sir.

Q. They expected to hold the agents liable?

A. They expected to hold the owners of the boats liable.

Q. Well, did they threaten to arrest you and Davidge and the McGuires, and anybody who were instrumental in selling the tickets?

A. That came to me indirectly, so I could not say whether there was any truth in the report or not.

Q. But you believed it at all events?

A. I thought it may be possible.

Q. Now, the arrangement about these boats, Mr. Gould, as to the manner of their going up there, was that the "Bristol" should be coaling at Comox and the passengers should be taken over there from Victoria?

A. That was the original arrangement, I believe.

Q. And the "Eugene" was to go up from Portland to be towed up from Portland to Port Angeles, and then be towed up there to join the "Bristol" at Comox and the "Bristol" to take her on up to St. Michaels?

A. That, I believe, was the original plan.

Q. Now, that was communicated to you, was it not?

A. Yes, sir.

Q. And that was your information when you commenced selling tickets to passengers?

A. It was when I started in selling tickets.

Q. Now, that is contained in this statement, which purports to be from Davidge to you (referring to exhibit "T") this letter of August 20, 1897?

A. It is contained there, you say?

Q. This shows that as late as that time, so late as August 21st or 22d, you must have been under that impression that that was the manner of the sailing of these ships?

A. I presume that is so.

Q. Now, when you say you gave these passengers the information which you did give them, or these people who bought tickets, that was the information you gave them in regard to the vessel, was it not?

A. I did, up until the time I received other information.

Q. When was that?

A. I don't know; I don't remember.

Q. Now, most of these passengers went over to take the "Bristol" before the 24th of August, did they not?

A. Yes, about the 24th.

Q. So that you did not get any information to the contrary between the 22d, and you must have got this letter of August the 24th, when these people went over?

A. I do not recollect the time. I think I received a message, stating that the boat would go to Victoria, but I do not know the date.

Q. Now, let us refresh your recollection. On September 24th, Davidge & Company wrote you about that \$35?

A. On September 24th?

Q. Yes. A. That's about a month after?

Q. Yes, I see. That would not throw any light on it. I was thinking it was August 24th. Had you ever seen the steamer "Eugene"?

A. Yes.

Q. Had you ever seen her at the time in August when you were selling these tickets?

A. I had not.

Q. Did you know anything about her?

A. Only what the McGuires told me.

Q. She was esteemed to be a good river boat?

A. They claimed she was.

Q. That was the purpose of her being taken up to be used on the river?

A. Yes, sir.

Q. That is what you told the passengers, was it not?

A. Yes, I understood she was a good staunch boat.

Q. For the river? A. For the river.

Q. And they thought she would be able to make the trip without any trouble whatever; that was the last thing that entered our minds; that there would be any trouble between Victoria and St. Michaels.

Q. Do you know what time the "Bristol" returned to Victoria?

A. I do not remember, but it was after—several days after she was to have sailed. I believe there were several days' delay—four or five days' delay.

Q. I did not mean before her setting out on the trip,

returning to Comox, but when she returned from Alert Bay and gave up the trip.           A. No, I did not.

Q. Did you ever see this release, which is said to be signed by Ruff and others?           A. No, sir.

#### Redirect Examination.

Q. (By Mr. HOGAN.) Now, turning to page 223 of your letter copy-book, I will ask you what that is there at the top of the page.

A. That is an order on F. C. Davidge of Victoria, for transportation on the "Bristol." The "Bristol" and "Eugene" to Dawson City—from Victoria to Dawson city.

Q. And this below it on the page there?

A. This is a receipt.

(Proctor for libelant offers the documents referred to in evidence. Objected to by proctor for claimant; first, because they appear to be letterpress copies, and the witness has not shown an excuse for the absence of the original, the original not being accounted for; and second, because they are incompetent, because this is redirect examination, and nothing has been called for in the cross-examination that would warrant this.)

Q. Is this a copy of a letter you mailed?

A. Yes, sir.

Q. This is a copy handed to Davidge & Company?

A. That is a copy of an order that I gave the passengers to hand to Davidge?

Q. Whose signature is that to this lower receipt?

A. W. W. McGuire.

Q. You know his handwriting?           A. Yes, sir.

Q. That is his handwriting, as secretary of the company?           A. Yes, sir.

(Proctor for claimant objects to the letters or the writings as before stated, they being only copies, and no ex-

case being offered for failure to introduce the originals. We do not base our objection upon the offer of proctor to read the documents into the record. Proctor for libelant reads documents offered.)

“Seattle, Washington, Aug. 21, 1897.

F. C. Davidge & Company, Victoria, B. C.

This will entitle the bearer, Mr. Joseph Jiskra, to transportation, Victoria to Dawson on ‘Bristol’ and ‘Eugene.’ We have accepted \$200 in cash, balance to be worked out on boats, per agreement with Mr. McGuire.

(Signed) C. W. GOULD, Agent.”

“Seattle, Wash., August 21, 1897.

Received of Joseph Jiskra \$200, to apply on transportation Seattle to Dawson, Northwest Territory, via steamer ‘Eugene.’ It is expressly understood and agreed that said Joseph Jiskra shall work on board ships ‘Bristol’ and ‘Eugene’ at whatever duties may be assigned to him by officers of said ships during said trip, in payment of balance of \$100, due on this ticket. This also includes transportation on 1,000 pounds freight.

(Signed) JOSEPH JISKRA,

(Signed) W. W. McGUIRE,

Secretary Portland and Alaska Transportation Company.

Witnesses:

William H. Giles.

C. W. Gould.”

Q. You were present when McGuire signed that, were you?      A. I was.

Q. I will ask you what this letter is on page 481 of the letter-book?

A. That is a letter addressed to F. C. Davidge & Company, Victoria, B. C., under date of August 17th, 1897.

(Proctor for libelants offers the letter in evidence. Proctor for claimant objects to the introduction of the testimony for the same reasons offered to the admission of the memorandum and receipt last above read.)

“Seattle Wash., August 17, 1897.

Mr. F. C. Davidge & Company, Victoria, B. C.

Gentlemen: Mr. McGuire, handed me the following memo., ‘Write Mr. Davidge at once that Mr. McGuire has closed contract for 1,000 lines of write-ups in “Post-Intelligencer,” with the understanding that it be paid by Thursday. Have him instruct you by wire to pay \$100.00 for his account as per agreement with McGuire. If not paid by Thursday wire to pay (33 per cent more).’ The above itself is explanatory. I presume that it is fully understood between yourself and Mr. McGuire. I am sorry I could not see you before you returned to Victoria, but I received memorandum left with my man. Everything starts off with a vim, and I think we are going to be able to fill out the list without much trouble. They have been having considerable trouble with the passengers of the “Humboldt,” and for awhile it looked as though they were going to desert that and make a break for our boat, but at this writing they have patched matters up for the time, and hope to get out of town some time to-morrow. They are short of room for freight, and we may get a pull at them yet. The freight man of which you spoke has not shown up, as yet. I presume that he will be on hand to-morrow. You did not leave any local tickets covering

the passage from here to St. Michaels, and it was absolutely necessary that we have something, so I had some printed. I inclose sample proof of ticket for your information. If this arrangement does not meet with your approval, kindly wire me and send the ticket you desire. You will note that under the arrangement, as outlined in this ticket we furnish passengers with local from here to Victoria, and an order on you for transportation from Victoria to St. Michaels. When they get to Victoria, you people can arrange their passage to connect with the 'Bristol,' and they will not be crying around here over the two transfers. Mr. McGuire wired you to-day with reference to taking some freight for the 'Humboldt' that it could not handle, but received no answer up to this writing. The proposition was that the 'Humboldt' people were to deliver all freight at Victoria, and we take it from there to St. Michael. Mr. McGuire could not see his way clear to talk with them on the proposition of taking freight from here, and has held back a little to see what they had in their hands before we committed ourselves. It looks as though they had bit off more than they could chew, and in case they could not take the freight, the passengers to whom it belonged would desert and come to us. Mr. McGuire thinks it might be well enough to quote a price at which the freight could be delivered at St. Michaels, taken at Victoria, and in case the question comes up again, we will be in position to act intelligently on the matter. Mr. McGuire requests me to mention the matter of the Hustler (should be Hassler), as the matter has to be closed up pretty soon, and may be you had over-

looked it in the shuffle. Will endeavor to keep you fully informed; should anything of unusual importance transpire, will wire you. Have made arrangements with the Puget Sound Bank, as suggested by you while here, and have deposited in the neighborhood of \$1,760 to your credit to-day.

Very truly yours,

C. W. GOULD."

Q. I believe that is all except your account, is it?

A. Yes, sir.

Q. Now, you say you rendered an account to H. P. McGuire, president of the company, of all moneys that you received from the sale of tickets?

A. Yes, sir.

Q. And also an account to Davidge & Company?

A. Yes, sir. They were made in duplicate.

(Testimony of witness closed.)

At this time, further proceedings were adjourned till Friday, November 17th, at 10 A. M.

Mr. J. H. JOHNSON, a witness called in behalf of the libellant, being duly sworn, testified as follows:

Q. (By Mr. HOGAN.) Where do you live?

A. Portland.

Q. What is your business? A. Steamboat business?

Q. What is your business during the month of August last?

A. Steamboat business.

Q. What relation did you bear at that time to the firm of F. C. Davidge & Company, of Victoria?

A. I was their representative in Portland; also representative on board the steamship "Bristol."

Q. Are you still their representative?



A. No, sir.

Q. You are acquainted with the steamship "Bristol" and the "Eugene"?      A. Yes, sir.

Q. Were you familiar with the business transactions in the month of August last between the Portland and Alaska Trading and Transportation Company and the steamer "Bristol" for the voyage of Alaska?

(Objected to by proctor for claimant as immaterial.)

A. In August, I was on board of the steamship "Bristol."

Q. Was there any contract extant at that time between the Portland company and Davidge & Company in regard to that voyage?

A. Yes, sir. I was absent during the negotiations you know of, that contract; I was in Alaska.

Q. Was that contract in writing?      A. Yes, sir.

Q. Have you it with you?      A. Yes, sir.

Q. I would like to have you identify the signatures to it. That is the contract you have there, is it?

A. Yes, sir.

Q. By whom is that signed?

A. By F. C. Davidge & Company and the Portland and Alaska Trading and Transportation Company, by H. P. McGuire, president, and the Portland and Alaska Trading and Transportation Company, by E. B. McFarland, vice-president and general manager.

Q. You recognize the signatures to that paper?

A. Yes, all except H. P. McGuire, whose signature I never have seen.

Q. Do you know the signature of McFarland?

A. Yes, sir.

(Proctor for libelant offers in evidence the document produced by the witness, and desires that a copy be submitted in place of the original, so that the original be returned to the witness. Proctor for claimant objects to the admission of the document in so far as it purports in any terms to bind the steamboat "Eugene.")

This article of agreement entered into this 13th day of August, 1897, between F. C. Davidge & Co., of Victoria, B. C., of the one part, and the Portland and Alaska Trading and Transportation Company, a corporation, represented by H. P. McGuire, its president, and E. B. McFarland, its vice-president and general manager, of the second part, witnesseth:

That whereas the said F. C. Davidge & Co. are the charterers and managers of the steamship "Bristol," a registered British ship; and

Whereas, the said Portland and Alaska Trading and Transportation Company, a corporation, are managers and owners of the sternwheel steamer "Eugene," a registered American steamboat, which they desire to sail upon the Pacific Ocean from Comox, B. C., to St. Michaels in Alaska, and desire to make this agreement, whereby the said steamship "Bristol" shall act as a convoy to the said "Eugene" between the said Comox and St. Michaels.

Now, this agreement witnesseth that each party hereby mutually covenant and agree to and with the other of them, its and their executors, administrators, successors; and assigns, by these presents, that is to say:

First.—That the said first party doth agree to carry two hundred (200) persons or passengers for the party of

the second part from Seattle, Washington, to St. Michaels, Alaska, on such steamer or vessel as may be chartered or secured by the party of the first part from Seattle, Wash., to said Comox or other port lying near there, there to be transferred from the said steamer or vessel to the said steamship "Bristol," and to be transferred thence to the said steamship "Bristol" to St. Michaels, Alaska, and to allow one (1) ton free personal baggage to each person, and upon the said trip between Comox and St. Michaels, the said steamship "Bristol" shall act as convoy to the sternwheel steamer "Eugene," the said steamer "Eugene," and anything in the said "Eugene" during the time it is in the convoy of the steamship "Bristol," to be wholly at the owner's risk, and the said convoy to continue for a period of fifteen (15) days from the time stated in this agreement for the departure of the said steamer "Bristol" from the said Comox, B. C., and for each additional sailing day of the said steamship "Bristol" as convoy to the said "Eugene," the said party of the second part is to pay the said party of the first part (\$200.00) two hundred dollars per day for such services as convoy.

Second.—The party of the second part doth hereby engage to provide and furnish not less than one hundred and fifty (150), or more than two hundred (200), passengers on board said "Bristol" by twelve (12) o'clock noon of the day herein provided for the sailing of the said steamship "Bristol" as convoy from Comox, and to pay such party of the first part one hundred (100) dollars passenger fare for each person so conveyed from Seattle to St. Michaels, and to pay the said party of the first part

hundred and fifty (150) passengers that the said second party shall fail to furnish, it being understood that the said second party is to pay for one hundred and fifty (150) passengers, whether they furnish them or not, and in addition thereto to pay first parties one hundred (\$100) dollars for each passenger in excess of the one hundred and fifty (150) passengers for such transportation as provided in this agreement between Seattle and St. Michaels, and in addition thereto to pay the party of the first part one-half ( $\frac{1}{2}$ ) of the cost of the fare of each passenger between Seattle and Comox, such fare to be ascertained and paid prior to the sailing of the steamer or vessel that may be chartered to transport said passengers from Seattle to Comox.

Third.—It is further agreed between the parties hereunto that during the said convoyship that the master and owner of the said steamer "Eugene" shall take directions and instructions from the master of the "Bristol," as to the sailing and handling of the said "Eugene," and that the said "Eugene" is to furnish its own motive power, at its own proper cost and expense during the said voyage.

Fourth.—That the said "Bristol" shall give to the said "Eugene" tow, whenever called upon to do so by the master of the "Eugene," and also in case of stress of weather or other accidents happening to the said "Eugene"; and it is further agreed that in case of the fortunes of weather or any other misfortune of any kind whatsoever happening to the said "Eugene," the said steamship "Bristol," or the said owners of the said "Bristol," or the parties of the first part hereunto, shall not in any manner

whatsoever be bound to make good the said steamer "Eugene" itself or anything in the said "Eugene."

Fifth.—It is further agreed that no loss of sailing days of the said "Bristol" shall be allowed on account of accidents to the said "Eugene" or stress of weather compelling the said "Eugene" to put into port, and that the said "Bristol" shall stand by in case of such stress of weather or accident and be entitled to the reckoning of sailing time and to compensation herein provided, the same as though the said "Eugene" was sailing.

Sixth.—It is further agreed that the sailing time shall commence to be computed from the time provided in this contract for the departure of the said "Bristol" as convoy from Comox and that any delay in starting on said voyage from said Port Comox caused by the failure of the said "Eugene" to be ready to start in conveyship from said Comox upon the day herein provided for the sailing of the said "Bristol" from said Comox shall be reckoned as part of the fifteen (15) sailing days for convoyship without additional charges that are provided in this contract.

Seventh.—It is further agreed that in case the said party of the first part shall have passengers or freight to unload at Dyea, that the said time so occupied in so unloading shall not be considered sailing days of the said steamer "Eugene"; and it is further agreed between the parties hereunto that the said first part shall have the free use of the said steamer "Eugene" and her crew in unloading passengers and freight so shipped by the said first party in the said "Bristol" to St. Michaels, and shall likewise have the free use of the said steamer in unload-

ing the said one hundred and fifty (150) passengers and their baggage provided for in this agreement at the said St. Michaels, without cost or expenses to the said first party for the use of the said steamer.

Eighth.—That the said steamer “Bristol’s” sailing date from Comox under this agreement shall be August 25, 1897, and that upon said date the said steamer “Eugene” shall be ready to depart from said Comox, B. C., in convoy of the said “Bristol,” and the sailing day of the vessel or steamer to be chartered or provided for the carrying of the said passengers and their baggage between Seattle and Comox shall be hereafter designated, and not earlier than August 23, prior to the time provided herein for the sailing of the said “Bristol” as convoy from Comox.

Ninth.—It is further agreed by and between the parties hereunto that upon the signing and sealing of this instrument said party of the second part shall deposit two thousand (\$2,000) dollars in the Bank of British Columbia, in Portland, Oregon to the credit of F. C. Davidge & Co., and shall make a further deposit of fifteen thousand (\$15,000) dollars, or shall have paid to the said F. C. Davidge & Co. said fifteen thousand (\$15,000) dollars on or before the 23d day of August, 1897, and additional thereto the sum of one hundred (\$100) dollars for each passenger over one hundred and fifty (150) passengers up to two hundred (200) as provided in this contract; and it is further agreed that the said two thousand (\$2,000) dollars deposited in the bank upon the signing and sealing of this contract shall be forfeited to the said party of the first part, in case the said party of the second part shall fail to pay in the said fifteen thousand (\$15,000) dollars to the

said bank or to the said party of the first part, as herein provided; and it is further agreed that the said first party are to receive three hundred (\$300) dollars for each and every ticket from Seattle to St. Michaels sold by the said party of the first part up to the amount of fifteen thousand (\$15,000) dollars, which sum shall be credited on the said fifteen thousand (\$15,000) dollars to be paid for said one hundred and fifty (150) passengers, and that upon the sale of a sufficient number of tickets at three hundred (\$300) dollars each to make fifteen thousand (\$15,000) dollars, the balance of said one hundred and fifty (150) tickets are to be delivered to the said party of the second part without charge; and it is further agreed in case the said party of the second part shall have so deposited with the bank, or have purchased fifteen thousand (\$15,000) dollars worth of tickets on or before August 23, 1897, the two thousand (\$2,000) dollars herewith deposited as a forfeit shall be applied in payment of such sums of money as may become due under this agreement for the "Bristol," acting as convoy to the said "Eugene," the sum to be held by the bank until report shall be received from the master of the "Bristol"; and it is further agreed that the sailing days to be paid for the services of the "Bristol" as convoy in excess of the ten (10) days covered by the two thousand (\$2,000) deposit shall be due and payable by the second party to the master of the "Bristol" prior to the casting off of lines at St. Michaels, and the said party of the second part doth hereby agree to indemnify and pay, or cause to be paid, unto the said party of the first part, the said fifteen thou-

sand (\$15,000) dollars for the one hundred and fifty (150) passengers' fare to be furnished under this agreement on or before the date of sailing from Seattle; and does further agree to pay unto the said party of the first part two hundred dollars (\$200) dollars for each day over fifteen (15) days as provided in this contract for the said "Bristol," acting as convoy for the said "Eugene."

Tenth.—It is further agreed that upon the sale and payment by said party of the second part to the said party of the first part of one hundred and fifty (150) tickets, and the payment of said one-half passenger fare between Seattle and Comox, said party are to have three tickets, free of charge, from Port Comox to St. Michaels, and return to Victoria, B. C.

In witness whereof, the first parties have signed and sealed this instrument, and the second party has caused this instrument to be executed by its president and vice-president and general manager, they being thereunto duly authorized by a resolution of the board of directors of the said second party, to make, execute, and sign and deliver this instrument.

F. C. DAVIDGE & COMPANY,

Per pro. J. H. Greer,

By Telegraphic Authority from F. C. Davidge & Co.

THE PORTLAND AND ALASKA TRADING AND  
TRANSPORTATION COMPANY.

By H. P. McGUIRE, President.

In presence of D. P. Johnson.

THE PORTLAND AND ALASKA TRADING AND  
TRANSPORTATION COMPANY.

By E. B. McFARLAND, Vice-President and General  
Manager.



Q. Do you know whether or not the voyage contemplated in that contract was afterwards undertaken by these vessels?

A. Yes, sir, it was.

Q. Were you in the party that went on that trip?

A. I was on board the "Bristol" as purser of the steamer.

Q. What time did you leave Victoria, if you remember?

A. We left in the morning about seven or eight o'clock, I think. This was the 31st of August, I think. I have got a very poor memory for dates.

Q. There is no controversy about the date; how long did you proceed on your journey?

A. About forty miles outside of Queen Charlotte sound.

Q. Was the "Eugene" in tow during that time?

A. Yes, sir.

Q. Where was she picked up by the "Bristol"?

A. Out between Victoria and Comox. You mean going up?

Q. Yes.

A. Between Victoria and Comox.

Q. Now, Queen Charlotte sound is as far as you went?

A. Outside of Queen Charlotte sound.

Q. What was the reason for turning back?

A. The "Eugene" signaled to stop, and gave instructions to the "Bristol" to be towed back to the nearest port; they signaled "broke down; tow back to nearest port."

Q. The "Eugene" was unable, then, to go further on the voyage?

A. I don't know.

Q. That was the signal?

A. I presume so.

Q. How long did you remain there before starting back?

A. We almost immediately turned back; as soon as we could hail them and get their order, we turned back right off.

Q. Where did you stop, the next port?

A. The next port we stopped at Alert bay.

Q. How far was that from where you turned around?

A. Oh, I suppose that must be a hundred miles, I guess.

Q. Now, at the time the "Eugene" signaled to you that she was broken down, and to turn around, or prior to that time, was there any storm or bad sea?

A. Not what we would call a storm or bad sea.

Q. You may describe what there was of that nature. There is some intimation here in the case that there was a storm. Describe it as near as you can; the character and condition of the weather there at that time.

A. There was very little sea on, but a strong breeze, at times squally, but not what we would call heavy weather.

Q. I believe you have in your possession two photographs taken at the time of the "Eugene," have you?

A. Yes, sir.

Q. I wish you would produce those photographs (wit-

ness does so); were you present when those photographs were taken?

A. I was on board of the ship.

Q. They were taken from aboard the "Bristol"?

A. They were taken from aboard the "Bristol."

Q. I show you this photograph marked by the commissioner "AA" for identification; what boat does that picture represent?

A. That is the steamer "Eugene" shortly after she signaled to stop.

Q. About how long after?

A. Oh, less than 15 minutes.

Q. That was taken from the deck of the "Bristol" or some point on the "Bristol"?

A. Yes, sir.

Q. Is she in tow there by the "Bristol" as represented in that picture?

A. Yes, sir.

Q. The tow line does not appear?

A. That was a wire cable, and when the "Bristol" stopped that cable disappeared.

Q. When was this other picture taken which has been marked for identification "AB," and what does it represent?

A. About the same time; I cannot say whether immediately before or after this other one.

Q. Is that the "Eugene" in the distance there, in that picture?

A. Yes, sir.

Q. Had the storm abated any or had the wind gone down when these were taken?

A. No, sir.

Q. Just the same as it was during the blow?

A. Yes, sir.

(Proctor for libelant offers photographs in evidence.)

Q. (By Mr. FLANDER.) Did you see these photographs taken?           A. No, sir.

Q. How do you know they represent the "Eugene" at these times?

A. From the position and general conditions that show in the picture.

Q. The "Eugene" was towing behind the "Bristol" for several days, was she not?

A. Several days, yes.

Q. She would be looking about the same on any of these days, would she not?           A. No, sir.

Q. What would the difference be?

A. Well, in the first place we had no weather similar to this, in my judgment. You can see she is practically stopped, otherwise the tow-line would be visible, and you could see the break of the water under her bow. The position of the men on the deck of the house I remember distinctly; one is Capt. Lewis, who was making signals; he would break a stick and throw it down on the deck to indicate a break down, being too far away to make us hear.

(Proctor for claimant objects, for the reason the photographs are not sufficiently identified. Papers marked Libellant's Exhibits "AA" and "AB," and returned herewith.)

Q. How long did you stop at Alert Bay after putting in there?

A. I stayed there about two days and a half.

Q. What was done there, what was the purpose of staying there so long, what was under discussion?

A. Waiting there, putting the steamer in condition, or making a decision as to what they would do with her.

Q. That is, the "Eugene"?

A. Yes, the "Eugene."

Q. Whose decision were you awaiting?

A. The representatives of the steamer "Eugene."

Q. What men?

A. Capt. Lewis and Mr. E. B. McFarland.

Q. Did they finally come to a decision?

A. Yes, sir.

Q. What was it?

A. That the "Eugene" could not proceed to St. Michaels.

Q. Did McFarland, as manager of the Portland and Alaska Trading and Transportation Company, sign a paper to the "Bristol" people?           A. Yes, sir.

Q. Have you that paper with you?

A. Yes, sir.

Q. I would like you to produce that, Mr. Johnson. (Witness produces paper.) In whose handwriting is this paper?

A. Mr. McFarland's.

Q. Were you present when Mr. McFarland signed that paper?           A. Yes, sir.

Q. That was at Alert Bay on the date it bears date?

A. Yes, on board the steamship "Bristol."

(Proctor for libellant offers paper in evidence. Objected to by proctor for claimant in so far as there is any attempt to bind the "Eugene" or her owners by any of the statements made, the same being incompetent for such

purpose. By agreement of proctors, the document was returned to the witness, a copy thereof being made by the commissioner and inserted in the record.)

**Libelant's Exhibit "AC."**

Alert Bay, Sept. 6th, 1897.

Captain James McIntyre, Commander S. S. "Bristol."

Sir: In view of the unseaworthy condition of steamer "Eugene," rendering her unfit for voyage to St. Michaels, even with repairs which it is possible to make with means available, and furthermore, owing to the urgent request of a large number, if not the entire list, of passengers on board S. S. "Bristol," that said S. S. "Bristol" return to Victoria, B. C., we hereby request and authorize S. S. "Bristol" to return to Victoria, B. C., in consideration of which we hereby release and absolve said S. S. "Bristol" and her charterers from any and all obligation of whatever nature and kind, specified in contract entered into by F. C. Davidge & Co. with the Portland and Alaska Trading and Transportation Co., dated Aug. 13th, 1897, or that may be contingent thereon, and furthermore, guarantee to compensate the charterers of S. S. "Bristol" for time lost in attendance on str. "Eugene" at Alert Bay, and in return to toward Victoria, B. C., provided such service is not called for under contract aforesaid.

Furthermore, we hereby agree to indemnify and protect S. S. "Bristol" and her charterers against any and all claims which the passengers on board said S. S. "Bris-

tol" may make against S. S. "Bristol" or her charterers, by virtue and under tickets which they hold for passage on S. S. "Bristol," and under shipping receipts for transportation of freight.

PORTLAND AND ALASKA TRADING AND  
TRANSPORTATION COMPANY.

By E. B. McFARLAND,  
Vice.-Pres. and General Manager.

Q. I will ask you if you have a letter from Capt. Lewis, who was master of the "Eugene" at that time, Mr. Johnson.

A. Yes, sir.

Q. Was that letter written in connection with this release?

A. No, sir.

Q. What date was it written on?

A. September 6th, 1897.

Q. That was the date the release bears?

A. Yes, sir.

Q. Who was Capt. Lewis, who signed that letter?

A. Master of the steamer "Eugene."

Q. To whom was that letter delivered?

A. Capt. James McIntyre, master of the steamship "Bristol."

(Proctor for Libelant offers in evidence letters produced by witness.)

The WITNESS.—I object to leaving this letter here.

Q. Explain, Mr. Johnson, why you do not want to part with this letter at this time.

A. It is needed in Victoria in connection with the suit now pending there.

Q. You may read that letter to the commissioner and have him take it down.

A. "Alert Bay, Sept. 6th, '97.

Capt. McIntire:

Dear Sir: Yours received and contents noted. I must say that the steamer "Eugene" is not in a fit condition to proceed with the steamer "Bristol" on her voyage north. We will have to remain here until towed out or convoyed by some steamer.

Yours respectfully,

C. H. LEWIS,

Master of Str. 'Eugene.'

To Capt. Jas. McIntire, Master of S. S. 'Bristol.' "

Q. Who does that letter belong to, Mr. Johnson?

A. F. C. Davidge & Co.

Q. And under their instructions you are not allowed to leave them on file here?

A. Yes, I am not allowed to leave it on file.

Q. What knowledge have you in regard to the delivery of that letter, Mr. Johnson, by Mr. Lewis to Capt. McIntyre?

A. I have none whatever.

Q. How did you get the letter?

A. From Messrs. Davidge & Co.

Q. Did you have it when you returned to Victoria on that trip?

A. No, sir; I presume Capt. McIntyre had it.

Q. Do you know the signature of Capt. Lewis?

A. No, sir.



(Proctor for claimant moves to strike the testimony relating to the letter on the ground that it is not identified, and on the further ground that it cannot bind the "Eugene" or her owners, and the testimony is incompetent.)

Q. Now, I would like to inquire whether Capt. Lewis was present during all the time these negotiations were pending at Alert Bay, that you have testified to that lead up to the signing of this release here by E. B. McFarland, manager.

A. I do not understand that question.

Q. Was Capt. Lewis present during any of that time, and did he take part in any of the negotiations or talk?

A. No, sir, if you refer to that document.

Q. Well, but during any of the previous conversations which lead up to the signing of this release, was Capt. Lewis—did you talk with him or did he talk with or take part in any of the conversations?           A. No, sir.

Q. Were there any meetings of passengers and the masters of the boats, or other business during these two days, to discuss the situation there?

A. I presume so; I do not know.

Q. Do you know whether Capt. Lewis attended any of these meetings?           A. I do not know.

Q. Mr. McFarland was along the whole of this voyage, as far as you went, was he?           A. Yes, sir.

Q. And returned with you to Victoria?

A. Yes, sir.

Q. Now, do you know to whom the money was paid, collected of these passengers for their passage, who was it paid to in the first instance?

A. Paid to F. C. Davidge & Co., as agents for the Portland and Alaska Trading and Transportation Company, through their various subagents.

Q. Davidge & Co., then, were agents for the Portland and Alaska Trading and Transportation Company in the sale of these tickets, were they?      A. Yes, sir.

Q. Was any of that money paid to the Portland and Alaska Trading and Transportation Company—if so, what amount?

Q. (By Mr. FLANDERS.) He says he was agent in Portland. I want to know whether he knows, before he answers any of these questions, of his own knowledge.

A. Yes, \$9,500.

Q. (By Mr. HOGAN.) Was there a receipt taken for that money?      A. Yes, sir.

Q. Who was that money paid to?

A. E. B. McFarland.

Q. Was that proceeds of the passage money?

A. —Vice-president and general manager.

Q. Was that the proceeds of the passage money or part of it?      A. Yes, sir.

Q. Was there a receipt taken for that money from McFarland, as manager?

A. Yes, several receipts; the amount was paid in several payments.

Q. Where are they?

A. They are in Victoria.

(Proctor for claimant moves to strike testimony of witness with reference to payments of this money, for the reason that the receipts are the best evidence.)

Q. Do you expect these receipts here?

A. I sent for the receipts and they ought to have arrived.

Q. What time should they be here in the regular course?

A. They ought to arrive here to-day, to-day's mail.

Q. Will you be able to get them if they come in to-day?

A. Yes, sir.

(Proctor for libelant asks permission to recall the witness upon arrival of the receipts.)

Cross-Examination.

Q. (By Mr. FLANDERS.) You say your business is manager or representative of F. C. Davidge & Co. of Portland? A. Now?

Q. At the time to which you testify.

A. That was my position, yes.

Q. Were you a member of the firm at the time?

A. No, sir.

Q. Simply an employee?

A. Yes, sir.

Q. You went along on the "Bristol" as her purser?

A. Yes.

Q. As a representative of Davidge & Co., along with the captain of the "Bristol"?

A. Along with the captain.

Q. Of the "Bristol."

A. I went with him, yes.

Q. You and the captain of the "Bristol" were representatives of Davidge & Co?

A. I don't know what the captain was; I know I was a representative.

Q. Davidge & Co. were charterers of the "Bristol," were they not?      A. Yes, sir.

Q. Was the captain there as their employee, or was he an employee of the owners of the "Bristol"?

A. He was employed by the owners of the "Bristol."

Q. How was he at that time?

A. He was then and has been.

Q. Since?

A. Whatever his relations may be now under the terms of the charter-party I could not tell you.

Q. As a matter of fact, Davidge & Co. did not pay the captain?      A. No.

Q. You say you left Victoria on the 31st of August?

A. One minute, I will just retract that. Davidge & Co. did pay the captain, I believe.

Q. You say you left Victoria on the 31st of August, 1897?      A. Yes, sir.

Q. You picked the "Eugene" up outside of Victoria, between Victoria and Comox?      A. Yes.

Q. Do you know the libelant in this case, Charles Ruff?      A. No, sir.

Q. Did not know anybody by that name?

A. No, sir.

Q. Do you know Gustave Jacobi?      A. No, sir.

Q. You do not know whether or not there were any people of that name or of these names on board the "Bristol"?

A. I think there were; if I had the list here I could tell for sure.

Q. You do not remember these men in particular?

A. No, sir, I do not.

Q. All the passengers were on the "Bristol," were they not?      A. All the passengers?

Q. All the passengers,

A. All the passengers that were on the "Bristol" were on the "Bristol."

Q. Were there any passengers on board the "Eugene"?

A. I don't know; there were a number of people there; whether they were passengers on her I don't know.

Q. Do you know whether or not the "Eugene" had any passenger outfits on board?

A. I don't know.

Q. The "Eugene" was towed up by the "Bristol"?

A. Yes, she was towed, yes.

Q. By what kind of a hawser?

A. Wire cable.

Q. How long?      A. About nine hundred feet.

Q. Did the "Eugene" have up steam?

A. Yes, sir.

Q. All the time?      A. Yes, sir.

Q. And from Comox out she went with her own power for a hundred miles or thereabouts?

A. I don't know the distance.

Q. But for some distance?      A. Yes, sir.

Q. And from that time on until she got to Alert Bay she was in your tow—in tow of the "Bristol"?

A. Yes, sir.

Q. Having steam for herself?

A. Yes. It should be understood that she was practically being towed; that is that the hawser was made fast—we made no pretense of towing her, but convoying her.

Q. The hawser was not taut?

A. Oh, yes.

Q. You did not consider yourself her towboat, but simply her convoy, is that it?                   A. Yes, sir.

Q. Now, you say that this signal was made by the "Eugene" about forty miles from Queen Charlotte sound?                   A. Yes, sir.

Q. That was on the open sea, was it not?

A. Yes, sir.

Q. How long had you been on the open sea—from the time you left Queen Charlotte sound?                   A. Yes, sir.

Q. You say the weather at that time was not what you would call stormy or bad weather, the sea was not what you would call stormy or bad?                   A. Yes.

Q. You mean that a vessel like the "Bristol" which was built for a sea voyage and was an ocean going vessel, was not much of a sea for her?

A. No, sir; it was the open sea.

Q. Was there or was there not a wind?

A. There was a wind.

Q. Do you remember the direction of the wind?

A. Southeast.

Q. Southeast wind; that is the wind that denotes stormy weather, does it not?

A. I do not know.

Q. What experience have you had with the sea in the vicinity of Victoria—had any experience on the coast?

A. Oh, yes, I have gone to sea a good deal.

Q. On the Pacific coast? A. Yes, sir.

Q. Don't you know as a matter of fact that a south or southwest wind is the wind that ordinarily causes the rough weather?

A. Yes, when they blow hard enough.

Q. Well, how was the wind this time, did it blow hard or not?

A. Not so very hard; quite a stiff breeze.

Q. Now, how is the sea, or how was the sea acting on the "Bristol" herself?

A. Did not have any effect on her.

Q. Of course it did not render her unseaworthy, but was the sea on her deck at all? A. No.

Q. Not at all? A. No.

Q. While the "Bristol" was convoying the "Eugene" there never was any time in which the sea was washing her decks or striking her decks, was there?

A. No.

Q. None of the passengers on the "Bristol" were sick, were they? A. A few, a very few.

Q. How long had the wind been from the south?

A. About—I don't know.

Q. What time of day was it that the "Bristol"—the "Eugene" made the signal to the "Bristol"?

A. About seven minutes past two.

Q. In the afternoon, of course.

A. Yes, sir.

Q. Had it been blowing from the south all that day?

A. Yes, sir.

Q. How fast were you going an hour?

A. About seven knots.

Q. You do not know how long before that day the wind had been blowing from the south?

A. No, sir; I was not there.

Q. You were steaming out in the open sea, took the outside passage?      A. Yes, sir.

Q. Anything said to you by Mr. McFarland or by Capt. Lewis—you say Capt. Lewis was in charge of the "Eugene"?      A. Yes, sir.

Q. With reference to the outside passage?

A. Yes, sir.

Q. They wanted you to go on the inside, did they not?

A. Yes, sir.

Q. And you refused to do it?      A. Yes, sir.

Q. They claimed that your contract made you take the inside and you claimed that you did not, is that correct?      A. No, sir.

Q. Now, just what was said between you at that time.

A. They claimed that they had an understanding with somebody to go inside.

Q. You would not go inside?      A. No, sir.

Q. Why not?

A. It was better for us to take the outside passage.

Q. Why better?

A. Shorter distance; impossible for us to take the inside passage, as we did not have a pilot.



Q. The "Bristol" did not have a pilot?

A. For the inside passage to the extent that they wished to go.

Q. How far could they have gone up the inside passage?

A. They could have gone to Dixon's entrance.

Q. That is not far from the Aleutian Islands, is it?

A. Yes, quite a distance.

Q. How much open sea would have been saved by going up that distance?      A. None.

Q. No open sea would have been saved?

A. No.

Q. Why did they want to go the inside passage then?

A. I do not know.

Q. Would it not have been smoother inside than where it was outside where you were going that day?

A. As long as we kept inside, yes.

Q. You say you could have kept inside up to Dixon's entrance?      A. Yes, sir.

Q. How far up the coast would that have been from where you were at the time?

A. I could not tell without a chart.

Q. Would it be five hundred miles?      A. No.

Q. It would not have been that far?      A. No.

Q. The chart would show?      A. Yes, sir.

Q. Now, what signal was made by the "Eugene"?

A. When?

Q. For you not to go ahead any more, what kind of a signal was made?

A. A blast of the whistle to stop.

Q. How far astern of you was she then?

A. The length of the tow-line.

Q. That was about 900 feet.

A. About 900 feet.

Q. What did you do then?           A. The "Bristol"?

Q. Yes.           A. Stopped

Q. What then?

A. Hailed them for more definite information.

Q. Keep right on and see what was done.

A. The captain of the "Eugene" had a stick which he would break, which he would hold over his head and break and throw down on the deck, which we interpreted to mean "Broke down." The captain of the "Bristol" took a blackboard and wrote "come up," and exposed it; they with their glasses read it and the "Eugene" then worked up closer to our steamer and exhibited on a blackboard "Tow back to nearest port; broke down." Then the "Bristol" swung around and towed her.

Q. To Alert Bay?           A. To Alert Bay, yes, sir.

Q. When did you get to Alert Bay?

A. We came there the next forenoon.

Q. Day and night.           A. Yes.

Q. How was the wind?

A. The wind moderated, and then again we had some squalls during the night.

Q. Wind from the same direction?           A. Yes, sir.

Q. Alert Bay was the nearest harbor to put into, was it?           A. I judge so, yes, sir.

Q. Who ordered her to Alert Bay?

A. I don't know.

Q. Did any men from the "Eugene" board the "Bristol" at that time?           A. Which time?

Q. At the time she started to turn back.

A. No, sir.

Q. None of your men boarded the "Eugene"?

A. No, sir.

Q. You say that there were objections made to the "Bristol" taking, or towing the "Eugene" on the outside, passage—you said that, did you not?

A. Yes, sir.

Q. Who made these objections?

A. Mr. McFarland.

Q. Did Captain Lewis say anything?

A. I don't know.

Q. Who did McFarland make the objections to?

A. To both Captain McIntyre and myself.

Q. What reason did he give for wanting to take the inside passage?

A. He stated that he had represented to the "Eugene" crew that the steamer would go by the island passage.

Q. Did he say it was safer or not?

A. I do not remember whether he spoke of the safety or not.

Q. He stated that it was the understanding between him and the "Eugene" crew?

A. Yes, I questioned him as to what he had to show for the understanding; there was nothing but the contract to guide me.

Q. Now, you say you stayed in Alert Bay for two days or two days and a half.

A. Yes, sir.

Q. What were you doing there?      A. At anchor.

Q. What were you doing yourself, why did you stay there that long?

A. I was aboard the ship.

Q. Why did the ship stay there that long?

A. Waiting for the "Eugene."

Q. What was she doing, what was the ship "Bristol" waiting for—who was representing the "Bristol"?

A. In what capacity? The captain represented the ship as master and I was the representative of Davidge & Co.

Q. Now, why was the ship and why were you staying there that length of time, what was the cause of this delay?

A. Under our contract we were compelled to return to a port of safety, in order that the steamer might be repaired in case of accident. The contract specially provides as to why we should stand by.

Q. What was the captain of the "Eugene" trying to do there?      A. I don't know.

Q. Did you have any talks with him yourself?

A. Yes, sir.

Q. What about?      A. Things in general.

Q. Well, about what in particular?

A. Sometimes we talked about the weather.

Q. How was the weather?

A. Very nice while we were in Alert Bay.

Q. What were the passengers of the "Bristol" doing all this time?      A. Nothing in particular.

Q. You say that McFarland signed that contract that you have introduced, or rather that letter to you, authorizing you to return?      A. Yes, sir.

Q. How long before you actually returned, started back?

A. That was signed in the afternoon and we started back the next morning.

Q. Was not that one of the reasons why you were staying there that long, to get this contract or to get this letter of McFarland? Had not you and he been having more or less words with reference to what was to be done?

A. More or less words—what do you mean by that?

Q. Well, was there not some difference of opinion between you and McFarland and the captain of the steamer about what was to be done?

A. The captain of what steamer?

Q. Of the "Bristol."

A. Oh, yes, there was some difference of opinion, naturally.

Q. What was McFarland wanting to do?

A. In what respect?

Q. You say there was a difference of opinion; I want to know what his opinion was and what your opinion was.

A. On what subject?

Q. On what was to be done?

A. I had no opinion except to carry out the contract.

Q. What did McFarland want to do?

A. I don't know.

Q. He did not say?

A. If your question is more specific I can probably answer better.

Q. Well, I am asking you.

A. I do not know what McFarland wanted to do.

Q. You say you talked with McFarland?

A. Yes, sir.

Q. What was the feeling among the passengers, what did they want to do?

A. They wanted to go back to Victoria when the "Eugene" broke down and could not proceed.

Q. Did the passengers consent to release the "Bristol"?

A. Yes, sir.

Q. Was that release signed before or after this letter of McFarland to you.

A. Well, the release was signed by so many passengers; I don't know anything about the time of signing, with the exception that it was on that day, the same day that I got a letter from McFarland; I had nothing to do with standing over the passengers and them signing the letter; they presented it as a whole.

Q. To whom?

A. To the captain of the "Bristol."

Q. To the captain of the "Bristol"?

A. Yes, sir.

Q. And that was received by the captain of the "Bristol" the same day in which you received this letter from McFarland to which you testify?      A. Yes, sir.

Q. Did all the passengers of the "Bristol" sign it?

A. All but one.

Q. Do you know who this one was? A. Yes.

Q. What was his name? A. Wirt.

Q. He did not sign it? A. No, sir.

Q. Have you that release with you? A. No, sir.

Q. The passengers, as I understand, wanted to return to Victoria? A. Yes, sir.

Q. And in conformity with their desires you did return to Victoria, they releasing you from the obligations of the "Bristol" to carry them to St. Michaels, is that correct? A. That is partly correct.

Q. In what is it incorrect?

A. In that it was not the sole reason for returning; we had a release also from the transportation company; these two in conjunction were sufficient to warrant us in returning to Victoria.

Q. You returned because these things were done, is that it? A. Yes, sir.

Q. How much freight did the "Bristol" have on board at the time she left—was she down to her lines?

A. No, sir.

Q. How much above her lines was she?

A. I do not know; considerably though.

Q. Where did you join the "Bristol"?

A. At Victoria.

Q. Before the "Eugene" came?

A. Yes, sir.

Q. Was there any freight transferred from the "Bristol" to the "Eugene" at Victoria? A. No, sir.

Q. None; there was some freight transferred from the "Eugene" to the "Bristol" at Victoria?

A. No, sir.

Q. Nothing of the sort?           A. . No, sir.

Q. None of the outfits loaded on the "Bristol" were taken over on the "Eugene" at Victoria?

A. Not at Victoria.

Q. At any point?           A. At Comox.

Q. . Why?

A. Before proceeding from Comox the officers of the "Eugene" requested that all of the ship's stores and a number of outfits then on board the "Eugene" be put on board the "Bristol" to lighten the "Eugene."

Q. That was done?           A. Yes, sir.

Q. That was done at Comox?           A. Yes, sir.

Q. Now, where did the "Eugene" have these outfits on board—did she have these on board when she came, when you first saw her at Victoria?           A. Yes, sir.

Q. She brought them with her?           A. Yes, sir.

Q. She brought them to Comox?           A. Yes, sir.

Q. She had come across from Port Townsend—had she not steamed across herself?

A. I think from Port Townsend, yes.

Q. And had these outfits aboard?           A. Yes, sir.

Q. They had not been put from the "Bristol" on to the "Eugene" and then put back on the "Bristol" from her?

A. No, sir.

Q. And these stores were the stores of the "Eugene" herself?

A. Yes, and outfits of those on board.

Q. Those on board the "Eugene?"           A. Yes.

Q. The crew of the "Eugene"?

A. Yes, I presume the crew.



Q. Did you go on board the "Eugene" after putting into Alert Bay?     A. Yes, sir.

Q. Did you look at her?     A. Yes, sir.

Q. In what had she broken down?

A. Well, the trusses which had been put in to strengthen her and give her backbone were working loose.

Q. By the force of the waves and sea to which she had been subjected?     A. Yes, sir.

Q. Well, the machinery had not broken down, had it?

A. Not to my knowledge.

Q. The "Eugene" was a river steamer?

A. Yes, sir.

Q. Was not an ocean going vessel?

A. No, sir.

Q. And you were towing up to St. Michaels, where she was to run on the Yukon river.

A. We were convoying her to St. Michaels, and from there she was to go, I believe, on the Yukon.

Q. You say the trusses had worked loose—anything else? Had her timbers or her deck or her seams opened?

A. I don't know.

Q. You saw the trusses loose, did you?

A. Yes, sir.

Q. The weather was sufficiently rough to work them loose, was it not?     A. Yes, sir.

#### Redirect Examination.

Q. (By Mr. HOGAN.) Then, Mr. Johnson, there were miners and persons going to Alaska on board the "Eugene," or persons having outfits on board her?

A. Yes.

Q. From the Alaska mining business. About how many?

A. About 10 or 11, I believe.

Q. With outfits? A. Yes, sir.

Q. Do you know whether any passage money was collected from them or not?

(Objected to, by proctor for claimant as incompetent, irrelevant, and immaterial.)

A. I do not know of my own personal knowledge; I was informed that they were.

(Proctor for claimant moves to strike the answer of the witness as hearsay.)

Witness excused from the stand.

JOEL P. GEER, recalled on behalf of libelants.

Q. (By Mr. HOGAN.) How long have you known Capt. Lewis?

A. I never knew him until shortly before he went on the "Eugene." I have met him around town once in a while, but never was acquainted with him.

Q. Were you along on that voyage?

A. Yes, sir.

Q. Do you know whose writing this is?

A. I think that was the mate's handwriting, the mate of the "Eugene."

Q. What was his name? .....

A. I cannot recollect it now.

Q. Did you know the mate at that time?

A. Never knew him until he came aboard the boat.

Q. Were you present when that letter was written?

A. No, sir.

Q. Cannot you think of the mate's name?

A. I cannot now.

Q. Was not it Jack Kegan?

A. Kegan, I believe, was his name. I think that is his writing.

Q. Other than the signature of Capt. Lewis?

A. Yes, sir.

Q. You did not see the signature of Capt. Lewis?

A. No, sir, I do not remember seeing it at all.

Captain F. B. JONES recalled on behalf of libelant.

Q. (By Mr. HOGAN.) Captain, could you identify that signature to that letter as the signature of Capt. Lewis?

A. I don't know that I ever see his handwriting; I don't know that I ever did. I never got any letters from him or anything; I believe I saw his name written once, but I am not sure.

J. H. JOHNSON recalled on behalf of libelant.

Q. (By Mr. HOGAN.) Have you those receipts now, Mr. Johnson?      A. Yes, sir.

Q. Do you know the signatures to those receipts?

A. Yes, sir.

Q. These are the receipts mentioned by you while on the stand before?      A. Yes, sir.

(Practor for libelant offers receipts in evidence. Proctor for claimant objects to their admission as immaterial. No objection made, on the ground that copies are substituted for the original.)

**Libelant's Exhibit.**

\$4,000.00                      Victoria, B. C., 25th August, 1897.

Received from Messrs. F. C. Davidge & Co., Four thousand dollars on account of S. S. "Eugene." For the Portland and Alaska Trading and Transportation Co.

E. B. McFARLAND,

No.                                      Treas. and Gen. Manager.

\$2,000.                              Victoria, B. C., 26th August, 1897.

Received from Messrs. F. C. Davidge & Co., two thou and dollars, on account S. S. "Eugene." For the Portland and Alaska Trading and Transpertation Co.

E. B. McFARLAND,

No.                                      Treas. and Gen. Manager.

\$3,500.00                      Victoria, B. C., 30th Aug., 1897.

Received from Messrs. F. C. Davidge & Co., three thousand five hundred dollars, on account S. S. "Eugene." For the Portland and Alaska Trading and Transportation Co.

E. B. McFARLAND,

No.                                      Treas. and Gen. Manager.

Libelants rest.

At this time further proceedings adjourned unto November 20, 1897, at 2 P. M.

Seattle, November 19th, 1897, 10 o'clock A. M.  
Continuation of proceedings pursuant to adjournment.

CLAIMANT'S TESTIMONY.

JOEL P. GEER, the claimant, being duly sworn, testified as follows:

Q. (By Mr. FLANDERS.) Captain Geer, you are the claimant of the steamer "Eugene," are you not?

A. Yes, sir.

Q. On the 31st day of July, 1897, state, if you know, who were her owners.

A. Captain Jones and myself. I think that was the date before we turned it over to the other people.

Q. On the 31st day of July, 1897, did you and Captain Jones enter into a written agreement with the Portland and Alaska Trading and Transportation Company in reference to the "Eugene"?

A. Yes, sir.

Q. I hand you a paper marked "Contract," F. B. Jones and Joel P. Geer and Portland and Alaska Trading and Transportation Company, dated July 31, 1897; state if that is the contract. A. Yes, sir.

Q. There are interlineations, Captain, on the first page. Were they made or not at the time it was signed?

A. They were made before we signed it.

(Paper offered in evidence, received without objection marked Claimant's Exhibit No. 2, and returned herewith.)

Q. I will ask you Captain, whether or not on the 7th day of August, 1897, yourself, together with the Willamette and Columbia River Towing Company, a corporation, entered into a contract with the Portland and Alaska Trading and Transportation Company in reference to the steamer "Eugene."

A. Yes, I think that was the date. Either that or shortly afterwards.

Q. Who were the owners of the "Eugene" at that time, on the 7th of August?

A. Captain Jones and myself, I think.

Q. Was Captain Jones interested in the Willamette and Columbia River Towing Company?

A. Yes, sir, he was president of the company.

Q. I hand you a paper marked "Contract Willamette and Columbia River Towing Company and Joel P. Geer, and Portland and Alaska Trading and Transportation Company, dated August 7th, 1897," and ask you whether or not that is the contract to which you refer.

A. Yes, sir that is the contract.

(Paper offered in evidence, received without objection, and marked Claimant's Exhibit No. 3, and returned herewith.)

Q. Now, Captain, please state, after these contracts were entered into, whether or not there was any change in the ownership of the "Eugene."

(Objected to by proctor for libellant as not the best evidence. Proctor for claimant proposes to submit a copy of the bill of sale later, and does not offer this as proof of the fact itself.)

A. Yes, sir, there was a change in ownership.

Q. Who is the owner of the boat now?

A. The Yukon Transportation Company.

Q. Captain, what interest, if any, in the "Eugene" did the Portland and Alaska Trading and Transportation Company have on the 11th day of August, 1897, or at any time thereafter?

(Objected to by proctor for libelant as not the best evidence.)

A. Never had any interest that I know of, so far as ownership was concerned.

Q. Did they or did they not have any interest in her or connection with her other than what they might have under these contracts introduced in evidence?

A. They never did.

Q. Now, you say when these contracts were signed, you were part owner of the "Eugene"?

A. Yes, sir.

Q. When did you part with your ownership, as an individual in the "Eugene"?

A. At the time the Yukon Transportation Company was formed.

Q. Then, as I understand, she was sold to a corporation? A. Yes, sir.

Q. Now, Captain, what was done with the "Eugene" after the first contract was signed—before you answer that question, you may state what kind of a boat the Eugene is, what she had been doing at the time of that contract?

A. She was a light draught Willamette river steam-

boat, and had been running on the upper Willamette river.

Q. What was her draught loaded.

A. I don't know exactly, but it was in the neighborhood of three and a half to four feet.

Q. And her draught light?

A. The draught light was sixteen inches.

Q. She is a sternwheel boat?

A. Yes, sir, she is a sternwheel boat.

Q. How long has she been running on the Willamette river?      A. Three years.

Q. What was her age?      A. Three years.

Q. What was her condition at that time as to seaworthiness, as a steamboat?

A. She was in as good condition as a light draught boat can be.

Q. Captain, you may state what was done with the "Eugene" after this contract of July 31.

A. She was pulled out on the ways, given a thorough overhauling, preparatory to going to sea.

Q. Did you oversee the overhauling or not?

A. Well, not personally, there was a carpenter or shipbuilder to oversee her.

Q. The shipbuilder was there to oversee her?

A. Yes, sir.

Q. Did you see it while it was going on?

A. Yes, sir.

Q. Now, you may state just what was done, in the way of overhauling the boat.

A. Well, in the first place, there were two keels put underneath, put inside on the floor timbers, and a Howe



truss built on top of that and timbers built on top. The guards were taken off and timber six by twelve boarded around the outside, so as to strengthen her, and keep the ways from catching under her guard. There was cross bulkheads put in and four-inch keelsons to protect the back of the deck throughout. Her house was fastened onto the deck, and the cabin was fastened onto the freighthouse, and she was boarded up on the outside complete from the guards to the deck under the wheel, and other minor things done. New boilers were put in since she was on the river, two new boilers were put in and the engines overhauled.

Q. What was this all done for?

A. This was done to make it safe for going to sea, except putting the boilers, and that was for making steam.

Q. Putting her safe for going to sea for what purpose?

A. For taking her up to the Yukon river.

A. Under the contract, yes.

Q. Was she fitted up at that time for the purpose of carrying any passengers or freight on the open sea itself?

A. No, sir.

Q. You are one of the parties to this contract?

A. Yes, sir.

Q. Was the contract talked over between you and the Portland and Alaska Trading and Transportation Company before it was entered into?

A. Yes, sir.

Q. What use of the boat by the Portland and Alaska Trading and Transportation Company was contemplated by this contract as far as you were concerned, when you entered into it?

(Objected to by proctor for libellant as not the best evidence, the negotiations having been reduced to writing afterward, and that writing being introduced in evidence here.)

A. It was contemplated they should continue the use of the boat after they got to the Yukon river and to go up to Dawson City last fall.

Q. What were they to have the use of the boat for?

A. For fitting her up and towing her up to the Yukon river, or having her convoyed up there.

Q. Was she or was she not to be used for the transportation of passengers or freight on the ocean?

A. She was not.

Q. And now, Captain, after the "Eugene" was fitted up in the manner in which you have testified, state what was done with her.

A. She was taken down into the river, and from there she was taken in tow and towed part of the time, and part of the time under her own steam, until we got into the Straits of Fuca; from there she was run up to Port Angeles, where we stopped and waited to put more repairs on her, and went from there to Port Townsend, and from Port Townsend we went to Port Gamble for timber, and back to Port Townsend, where we laid two days and spent something like \$300 in addition for work, and from there to Port Angeles, and laid there at that time something like a week, waiting for the "Bristol" to come back from Skaguay or Dyea, when we wanted to go in company with her to the Yukon river.

Q. You met the "Bristol" at Victoria?

A. From Port Angeles we went over to Victoria, and run to the outside harbor, hailing distance of the "Bristol"; we were about 200 feet, and I didn't know the boat at the time, and from there we steamed up the straits towards Comox, and on the way the "Bristol" picked us up and gave us a tow-line and helped us over to Comox.

Q. Now, Captain, when you first went over and met the "Bristol" did or did not the "Eugene" have any passengers on board?     A. She did not.

Q. Who were on board the "Eugene"?

A. Her crew.

Q. Of how many did her crew consist?

A. I think there was fourteen. I could count them all

Q. Fourteen.

A. Around there, yes.

Q. Were you on board yourself?     A. Yes, sir.

Q. In what capacity?     A. Second mate.

Q. As I understand, you were a representative of the owner—of the company?

A. Yes, sir. General manager for the Yukon Transportation Company.

Q. Who was captain of the "Eugene"?

A. Captain Lewis.

Q. Did the "Eugene" have any passengers on board?

A. No, sir.

Q. No freight on board belonging to any of the passengers?     A. No, sir.

Q. Or belonging to the libelants in this case?

A. No, sir.

Q. Or any other passengers?      A. No, sir.

Q. What did she have on board?

A. She had on her stores and a few outfits for some of the crew that expected to stay up there.

Q. Were some of the crew expecting to stay up there when they arrived on the Yukon?      A. Yes, sir.

Q. Do you know the libelant, Charles Ruff?

A. No, sir, I am not acquainted with him; I have seen him.

Q. When did you first see him?

A. Oh, I never saw him to know who he was, except when he was giving his testimony in this suit in Seattle.

Q. Were you on the "Eugene" during all the time she was making this trip?      A. Yes, sir.

Q. Was he ever on the "Eugene" as a passenger?

A. No, sir.

Q. Was any of his outfit or freight on the "Eugene"?

A. No, sir.

Q. Do you know the libelant, Jacobi?

A. I know him by sight, by seeing him here in Seattle; possibly seen him before, but not to remember him.

Q. Was he ever on the "Eugene" as a passenger?

A. No, sir.

Q. Was any of his outfit ever on the "Eugene"?

A. No, sir.

Q. Was any of the outfit of any of the people who took passage on the "Bristol" on the "Eugene"?

A. No, sir.

Q. Were any of the passengers on the "Bristol," ever on the "Eugene" as passengers?      A. No, sir.

Q. Now, captain, after you left Victoria, or after you left Comox, you may describe the voyage of the "Eugene."

A. From the time we left Comox, we left along without the "Bristol"; we were out about 40 miles when the "Bristol" came along and gave us a tow-line; from there we ran up through Charlotte sound outside of Charlotte sound, in fact, as I could not tell Charlotte sound from the ocean except by seeing an island in the distance. We got out in the ocean and a storm came up a blow, it was a storm—it might not have been for a ocean vessel—and about noon Captain Lewis went below and began to examine the boat while I went to dinner.

Q. To examine the "Eugene"?

A. It was then my watch in; I had been steering and I went to bed; they woke me up and told me that Capt. Lewis wanted to see me; they did not believe that the boat could stand through the storm and would do well to get back to port.

Q. Now, you may describe how the boat was going then, and what was the condition of the wind and the weather.

A. The weather had progressed on—the wind was squally and it would make the boat pitch a good deal, the "Bristol" as well as the "Eugene," and the waves at times would come up, and the wind would blow the spray up into where we were steering, and she was working down below, the trusses were working, and one of the chiefest dangers in my opinion was the fact that the bow would rise on the waves and come down flat, like a board flat on a barn floor, and we were afraid she would mash the bow in; as a matter of fact it did break some of the timbers in the bow.

Q. What was done—what direction was the sea coming from?

A. Well, we were going into the waves; I do not know particularly what direction the sea was coming from, the wind was—

Q. Was it a head sea or not?

A. No, sir, it was not a head sea at that time; it was coming from the quarter.

Q. Now go ahead; you say you went to your dinner about noon?

A. Well, they woke me up; Captain Lewis wanted me to go down and examine her; I went down with one of the deckhands and made an examination of the boat, and came back and told him that I would rather concurred in his opinion, but I did not like to say anything, as he was captain of the boat, and he had consulted with all the rest of them, and all the rest concurred in his opinion that they would go back, and while I thought that way myself, I did not want to go to any decision on my own part—the decision should be left with the Captain, as he was a seafaring man, so they thought that they had better turn around and go back; he blew the signal and afterwards he went up and wrote on a board, “Take us into the nearest port in tow.” In the meanwhile I had taken the wheel, and we had got along rather more alongside of the other boat, and he signaled to take us to the nearest port. There was nothing on board there was broken down. We then turned around and went back to port, and it was pretty dangerous, and a good many of them were scared and wanted to be put off on the “Bristol.”

The boat was working, the trusses were working, but in my opinion the chiefest danger was her pounding her bow on the waves.

Q. Was she making any water?

A. Yes, a good deal of water.

Q. How much?

A. I do not know exactly, because we could keep it down with our siphon; we kept steam up all the time, and we kept it down with a siphon, but it made pretty fast.

Q. How was the sea?

A. The waves broke over the bow part of the time and part of the time not.

Q. How were they around her wheel?

A. Around her wheel I don't know; I was not back aft at all. When we got into Alert Bay we got there in the afternoon; I know the time because we came alongside the "Bristol" at one time, and I got on there to see a party, and they went in, and I was on there until after dinner, and I was there until about two o'clock, I think, before we came to anchor.

Q. How had the weather been, the sea and the weather been prior to the day on which this had happened?

A. Fair.

Q. How had the "Eugene" behaved in that weather?

A. Good.

Q. Had anything broken or not?

A. Coming over the Columbia river bar, outside there they broke a hog chain in which there was a flaw, which could not be seen—it was next the timber—but that was

fixed and there was nothing broken until we struck that storm.

Q. Where was that fixed?

A. That was fixed at Port Townsend.

Q. That was one of the repairs to which you have referred in your testimony?

A. Yes, sir.

Q. You say the weather was fair from the time you left Comox until you got into the open sea?

A. Yes, sir.

Q. Had the "Eugene" been making any water then?

A. No, sir, not to speak of.

Q. Do boats make, as a general rule, any water or not?

A. I never knew one but what made some.

Q. You had a siphon on, as I understand?

A. Yes, six of them, I think.

Q. What was the condition of the "Eugene" as to her seaworthiness as a steamboat when she left Victoria?

A. No pains or expense was spared to put her in as good condition as we could, what we considered as good a condition as she could be put in.

Q. Was or was not the trip of the "Eugene" to St. Michaels an experiment?

A. It certainly was.

Q. Did you as an owner of the "Eugene" consider it as such?

A. It was considered running a risk of losing the boat, certainly.



Q. After the "Eugene" came into Alert Bay in what condition did you find her?

A. We found her pretty badly strained; there was a report made with some of the passengers and officers of the "Bristol," and captain of the "Eugene" made an examination.

Q. You were down with them?

A. I was not with them but they made a report.

Q. Did you make an examination?

A. I made an examination afterwards of the forward part of the boat; I did not go aft because the Captain made an examination there and this committee, and had made their report.

Q. What did you find forward?

A. I found that some of the timbers had been broken forward by the force of the waves; this committee never found that from the fact there was wood stowed in the hold and they could not get at it; I went in there and moved that wood and came in forward so as I could make a further examination.

Q. You found it had been stove in by the waves?

A. Yes, sir.

Q. What was the condition of the "Eugene" as to her ability to further proceed?

A. Well, I do not think that she was in a position to proceed on that voyage to St. Michaels at that time—certainly was not.

Q. Why was not she?

A. On account of the force of the waves on her.

Q. How were her seams?

A. Her seams were leaking pretty badly.

Q. They were leaking badly? A. Yes, sir.

Q. Now, what was done with the "Eugene"?

A. She was brought to Seattle and put on the ways and overhauled.

Q. Over here at Ballard. A. Yes, sir.

Q. Do you know what was done on her?

A. There was some timbers put in, timbers were spliced and calked throughout.

Q. Why was that done?

A. Well, because the opening of some of the planking made necessary; some of the planking was strained.

Q. Do you know who ordered that done?

A. Well we had her put on the ways, had it done. Capt. Jones and myself.

Q. Were these repairs rendered necessary to her by reason of the weather to which she had been subjected?

A. Yes, sir.

Q. I understood you to say, Captain, that that day in which Captain Lewis decided that she would have to put back, the waves at times were breaking upon the bow of the boat?

A. Breaking over the bulwarks on the bow.

Q. How high was that above the water?

A. I think about eight or nine feet.

Q. How was the sea itself?

A. The sea was choppy.

Q. The sea was breaking? A. Yes, sir.

Q. How was the sea on the "Bristol," did you notice?

A. The "Bristol" was pitching a great deal, I think,

for an ocean vessel, pitching badly; she was going up and down and rolling a great deal.

Q. Was she or was she not high above the water?

A. Yes, she was pretty high above the water.

Q. How was the "Eugene" behaving?

A. Well, she was behaving as well as could be expected for a river boat in a storm.

Q. You considered it stormy, did you not?

A. It was not a winter storm; she could not have lived through a winter storm half an hour; it was a storm for a river boat; it was not a storm for an ocean going vessel.

Q. Was it rougher weather than you had been having?

A. Yes, sir.

Q. How was the weather there compared with the weather that you had from the Columbia river and the straits?

A. It was entirely different, for the worse.

Q. Entirely for the worse?

A. Yes, sir.

Q. How had the "Eugene" behaved on the trip from Columbia river to the straits?

A. No trouble at all, except the breaking of that hog chain where that flaw was.

Q. How did her truss behave?

A. Her trusses had given way and we put in a new piece on top; the trusses were made in splices, and we put a piece the full length at Port Townsend.

Q. What kind of weather did you have from the Columbia river to the straits?

A. We had very good weather, and we had a little blow one evening; one evening we lay up under the lee of Destruction island until morning.

Q. A blow one evening?      A. Yes, sir.

Q. From what direction?

A. It was from off shore, I think.

Q. Was it accompanied with rain or not?

A. No, sir, it was not rain, it was fog.

Q. You say you were general manager of the Yukon Transportation Company, of Portland, Oregon?

A. Yes, sir.

Q. The owner of the "Eugene."

A. Yes, sir.

Q. Did you receive any of the passage money of these libelants?      A. No, sir.

Q. Did you have any dealings with these libelants?

A. No, sir.

Q. I understand you never saw them to know them until they got into Alert Bay?

A. I never saw them to know who they were until they got here in Seattle after they returned with the boat.

#### Cross-Examination

Q. (By Mr. HOGAN.) Are you a member of the Yukon Transportation Company?      A. Yes, sir.

Q. Are you an officer of that company?

A. General manager.

Q. Are you an officer besides?

A. Master of the steamer.

Q. Have you the articles of incorporation of that company here?           A. No, sir.

Q. Are they here?       A. No, sir.

Q. Who are the other members or incorporators of that company?

A. Capt. Jones—I am not certain who the other incorporators are.

Q. How many are in it?

A. That I do not know; stock has been issued at a dollar a share.

Q. But the original incorporators who filed the articles, who are they?

A. I am not certain who; I think Mr. Searns was one.

Q. Are the McGuires interested in that corporation?

A. No, sir.

Q. They hold any stock in it?       A. No, sir.

Q. Now, prior to the making of these contracts that have been introduced in evidence here in August, what interest did you have in that boat?

A. I had purchased all of Capt. Jones' interest; I had her partly paid for.

Q. You had a contract for the sale of the boat from Capt. Jones?       A. Yes, sir.

Q. What interest did you have in it, what did it represent?

A. That represented the whole of it when it was paid for.

Q. But there was a payment back on it?

A. Yes, sir.

Q. The legal title, then, was in Jones?

A. The Columbia River Towing Company.

Q. Of which Jones was president? A. Yes, sir

Q. Then both of you and Jones claimed to be owners of this boat, made these contracts with the Portland Company—with the McGuires? A. Yes.

Q. Was Jones interested in the Portland and Alaska Trading and Transportation Company?

A. Not that I am aware of.

Q. I will ask you if he was not one of the incorporators of that company?

A. Not that I am aware of.

Q. You do not know about that?

A. I do not know about that.

Q. At that time he held the legal title to this boat?

A. Yes, sir.

Q. Now, was possession of this boat delivered to the Portland and Alaska Trading and Transportation Company at the time of the making of these contracts?

A. It was placed under their order—they were not in the possession of the vessel that I am aware of.

Q. It was subject to their orders from that on?

A. To their orders.

Q. As a matter of fact, it was in their possession from that on?

A. Well, I don't know; I was on the boat all the time, as manager of the Yukon Transportation Company.

Q. Who employed the crew of the vessel after that?

A. The McGuires.

Q. Who employed Captain Lewis, manager of the "Eugene"? A. The same.

Q. In what capacity were you working on the boat—were you under salary?

A. No, sir, I was under salary for the Yukon Transportation Company.

Q. You say there were a crew of fourteen on that boat going to Alaska?

A. I think that was the number.

Q. It might have been seventeen, might it not?

A. It might have been.

Q. I believe there is some evidence to that effect.

A. I am not sure about that.

Q. Was not that an unusually large crew for such a boat?

A. No, sir, not when you run day and night. It is an unusually small crew for a 24-hour service.

Q. Now, you say some of that crew had mining outfits?

A. Yes, sir.

Q. How many of them?

(Objected to by proctor for claimant as immaterial.)

A. I do not know, but I think about seven or eight.

Q. Had these men paid any passage money?

(Objected to by proctor for claimant as immaterial.)

A. I do not know that they did.

Q. You do not know whether they did or not?

A. No, sir, I do not know.

Q. Do you know whether they received any wages, these fellows that had outfits?

(Objected to by proctor for claimant as immaterial.)

A. I contracted to pay them a certain amount per month, the crew.

Q. Was not that a preliminary that was gone through shipping them on the vessel as a crew, for the purpose of evading the law?

(Objected to by proctor for claimant as immaterial.)

A. I do not know hardly what you mean by that.

Q. I will ask you if these persons who had outfits on the boat did not ship as a crew for the purpose of evading the customs laws.

A. No, sir.

Q. These contracts introduced here in evidence by the claimant represent the rights of the Portland and Alaska Trading and Transportation Company in the premises, do they?  
A. Yes, sir.

Q. Who paid for the repairs that were made on the vessel at Portland?

A. The Portland and Alaska Trading and Transportation Company under the contract.

Q. Possession was delivered to them prior to the making of these repairs?

A. They never took possession of the boat in the way that I understand, that a man takes possession of property at all.

Q. But they assumed control of it?

A. Yes, sir.

Q. For the purpose of making repairs?

A. Yes, sir.

Q. And for the purpose of this trip to Alaska?

A. Yes, sir.

Q. You knew what they were doing with that boat at all times?  
A. Yes sir.



Q. You knew of this trip of the vessel that was advertised in connection with the "Bristol" to St. Michaels and from there on up the river?

A. I knew nothing about their advertising that.

Q. You knew of the trip?

A. I knew they were going to make the trip, yes, sir.

Q. You knew of these passengers being carried on the "Bristol" with their outfits?           A. Yes, sir.

Q. They were to be transferred at St. Michaels?

A. Yes, sir.

Q. You knew all about that?           A. Yes, sir.

Q. Now, the Portland and Alaska Trading and Transportation Company had authority to do that, had not they?           A. Yes, I suppose so.

Q. They had authority?

A. According to the contract; whatever authority there is it is in the contract.

Q. The "Eugene," then, was not engaged in any undertaking different from the terms of the contract in doing this, was she?

A. No, not that I know of.

Q. Now, are you a seafaring man?           A. No, sir.

Q. You are not?           A. No, sir.

Q. Your experience with boats has been inland, inland waters?

A. My experience in working on boats has been on inland waters; I have been on outside waters as a passenger considerably.

Q. Now, you say the "Eugene" was seaworthy when she left Portland?

A. She was seaworthy as any one could make it.

Q. Still, you had no experience with such vessels in going to sea?      A. No, sir.

Q. And would not know the effect of the sea on them, would you—you are not a practical seafaring man, you judged the seaworthiness of that vessel at Portland, did you?      A. No, sir.

Q. You say you made the trip to Port Townsend all right?      A. Yes, sir.

Q. But still you say you broke a cable and also these same trusses gave away?      A. Yes, sir.

Q. The trusses gave way in the first place on the trip from Portland to Port Townsend?      A. Yes, sir.

Q. These were the same trusses that afterwards gave way out at sea?

A. Strengthened—the same.

Q. They are the same trusses?      A. Practically.

Q. And you say the weather between Portland and Port Townsend was all that could be wished?

A. Yes, sir.

Q. It was all right?      A. Yes, sir.

Q. Perfectly clear weather, the sun shining and no wind to amount to anything?

A. Not very heavy winds; what I speak about one evening there was a breeze off Destruction island.

Q. When you got to Port Townsend you found that these trusses were not sufficient?      A. Yes, sir.

Q. Then you fixed them over?      A. Yes, sir.

Q. And it was the giving way of these same trusses out at sea that caused you to turn back, was it?

A. Not so much as the hammering of the bows on the waves in the storm. She is a flat-bottomed boat.

Q. But these are the trusses you mentioned in the direct examination as the chief break-down of the vessel?

A. I did not call them the chief break-down of the vessel, and, as I said in my direct examination, I consider the chief danger lay in the hammering of the bow of the boat, the flat bottom on the waves; as she came down off the wave, her bow at times would come clear down out of the air and come down like a board on a barn floor.

Q. In other words, the difficulty was that this undertaking was not a feasible one, was it?

A. It would have been feasible if it had been the inside passage, as we expected. We never expected anything else.

Q. It would have been a practical one in the best of weather, would it not?

A. Not necessarily the best of weather,

Q. It would have to be good weather?

A. Have to be fair weather?

Q. Now, you do not pretend to say that this was an ocean storm?

A. Not ocean storm for a sea-going vessel, no, sir; it was squally and choppy.

Q. A sea-going vessel would make nothing of going through such a storm?      A. Certainly not.

Q. Was the sun shining?

A. No, sir. It was raining very hard at times.

Q. Now, were any of the knees of the "Eugene" broken?      A. When?

Q. At the time you turned back?

A. There were some of them cracked, yes, sir.

Q. How many of them?           A. I do not know.

Q. Well, approximately.

A. Well, I could not approximate, because I never went in there to examine.

Q. Were there ten of them broken?

A. I don't think so—I don't know.

Q. Now, there might have been?

A. There might have been forty, for all I know, for I never examined, but I do not think so.

Q. Now, Mr. Geer, I would like to have you state whether or not any of these knees were broken before she left Portland.

A. Yes, sir, and fixed with clamps again.

Q. How many were broken?

A. Three or four.

Q. Were there not five?

A. Possibly might have been five.

Q. They were broken before she left Portland?

A. Yes, sir, and fixed.

Q. Fixed with clamps?           A. Yes, sir.

Q. Now, you speak of some report that was made there at Alert Bay, I believe; it was after an investigation of the condition of the boat?

A. Yes, sir.

Q. Who was that report made by?

A. I am not certain who that report was made by; there were some officers from the "Bristol" and some pas-

sengers from the "Bristol," and I think Captain Lewis, but I am not positive.

Q. What was the substance or effect of that report, as to her condition?

A. Well, the substance, the effect of the report was that she was unable to proceed on that voyage without being repaired.

Q. You did not exercise any authority on board the "Eugene" during that voyage, did you?

A. Not in the management of the boat, no, sir.

Q. The control of the boat, as to her navigation and trip, was vested in the Portland and Alaska Trading and Transportation Company, was it not?

A. I suppose it was, in one sense, and another sense, it was not.

Q. Who was the manager of that expedition?

A. The Portland and Alaska Trading and Transportation Company was manager of their part of it.

Q. Who was manager for them?           A. For them?

Q. Yes.

A. Why, H. P. McGuire seemed to be manager in Portland.

Q. But on board of these vessels?

A. On board of the vessels Captain Lewis had control of the "Eugene," and I was under Captain Lewis on the trip.

Q. But at Alert Bay?

A. That I do not know; I did not see any managers at Alert Bay.

Q. Did you see McFarland?

A. Oh, yes, sir.

Q. Don't you know that he was manager of that company?

A. I know that he purported to be manager of that company.

Q. And Captain Lewis was under his direction, was he not?

A. I suppose so. I do not know. It was their business, not mine.

Q. As to whether or not the vessel should return or proceed depended on the orders given by McFarland or Captain Lewis?

A. I suppose so.

Q. He stood in the place of the Portland and Alaska Trading and Transportation Company as to the directions to be given?

A. So far as I know—I obeyed no directions or orders but Captain Lewis'.

Q. You say the taking of this vessel to Alaska was an experiment.      A. Certainly.

Q. Were these passengers and freight taken in that way, or were the passengers informed that that was an experiment?

A. All those that were in Portland were informed that it was an experiment, as far as I know. I knew some of them knew it was an experiment and they were taking chances.

Q. Was it advertised as an experiment or as an assured thing?

A. I do not know; I never saw any advertisements.

Q. Before the passage money was paid there was nothing said about an experiment?

A. I had nothing to do with the passage money; I know nothing about that whatever.

Q. When did you expect to get possession of the vessel again?

A. I expected to get it at Dawson City.

Q. When?

A. After we got to Dawson City; I expected to have possession of the boat at Dawson City.

Q. Then you were to have possession of it jointly with the Portland and Alaska Trading and Transportation Company, were you?

A. No, sir, we were to have complete possession.

Q. Did you enter into a further contract with the Portland and Alaska Trading and Transportation Company?

A. We merely entered into a contract by which they were allowed a part of the receipts. The traffic contract—the contract shows there what it is; we were to have all our local business, and there was no local business to go to the Portland and Alaska Trading and Transportation Company; that was ours—the Yukon Transportation Company.

Q. So that when you testified to what was said before these two contracts were signed, you did not mean to add anything to what is contained in the contract, do you?

A. There was some talk about things that were not expressed in the contracts.

Q. But these embody your agreement, do they not?

A. They embody the main part of the agreement.

Q. There was no misunderstanding, and there is nothing misleading or ambiguous about the contract?

A. None that I am aware of.

Q. Were these papers filed in the collector's office in the port of Portland?

(Objected to by proctor for claimant as immaterial.)

A. That I don't know.

Q. You don't know about that?                   A. No, sir.

Q. Do you know of the signing of the contract between the Portland and Alaska Trading and Transportation Company and of F. C. Davidge & Company, of Victoria?

A. No, sir, nothing whatever.

Q. You knew they had entered into an arrangement with the steamship 'Bristol'?

A. I understood so; I knew nothing of my own knowledge.

Q. You made no objections to that?

A. No, sir.

Q. Or any further investigation?

A. No, sir.

Q. I notice here a sort of supplement or addition to this contract of August 7th, 1897, pasted onto the cover; do you know anything about the signing of that paper?

A. Yes, sir.

Q. You say you do know something?

A. Yes, sir.

Q. When was that signed?

A. Oh, I do not remember the date.

Q. Were you present when it was signed?

A. No, sir.



Redirect Examination.

Q. (By Mr. FLANDERS.) Captain Lewis was in charge of the "Eugene," was he? A. Yes, sir.

Q. Was he the man from whom you and those on the "Eugene" took orders?

A. Yes, in the management of the boat, the handling of the boat.

Q. Did the "Eugene" take any orders from McFarland? A. Not that I am aware of.

Q. Was Lewis a seafaring man?

A. Yes, he purported to be.

Q. Do you know whether or not he had any experience as a navigator in the waters of Alaska?

A. Yes, I understood such to be the case.

Q. You understood so at the time? A. Yes, sir.

Q. Well, did you know anything of the McGuires or anybody publishing advertisements in the Seattle papers?

A. No, sir, I knew nothing at the time.

Q. The authority, as I understand, that the McGuires had is all contained in those two contracts to which you have testified? A. Yes, sir.

Q. Do you know anything of your own knowledge about any representations that were made to the libelants in this case? A. I do not.

Q. Do you know anything whatever, what the contract was between the Portland and Alaska Trading and Transportation Company and the libelants?

A. I do not.

Q. You say Captain Lewis was in charge of the "Eugene"? A. Yes, sir.

Q. Where did he take charge of the "Eugene"?

A. At Portland, Oregon.

Q. Before she went to Victoria?

A. Yes, sir.

Q. Did he stay on the "Eugene" until she got to Victoria or not? A. Yes, he did.

Q. All the time or not? A. Yes.

Q. Were you with him? A. Yes.

Q. (By Mr. HOGAN.) If the McGuires, representing the Portland and Alaska Trading and Transportation Company, did publish advertisements here, they did nothing in doing that contrary to their agreement, did they? You found no fault with them in violating the agreement in any way--did you ever claim that they violated the agreement with you before the abandonment of the voyage?

A. I never knew anything about the publication of such matter until this libel suit.

Q. They had a perfect right to do that under their contract, did they not?

A. They had a perfect right, to a certain extent.

Q. They had the use of this vessel for that voyage and whatever legal business they chose to carry on, did they not?

A. They had the use of the vessel from the mouth of the Yukon to Dawson City.

Q. And from Portland up, did they not?

A. They were not to use the vessel from Portland up for any purpose.

Q. But you say they did carry freight?

A. They only had a few outfits of some of the crew.

Q. Was that a violation of their agreement?

A. It was not in violation of the agreement to carry outfits of the crew on the boat; not that I was aware of.

Q. (By Mr. FLANDERS.) You say the use of the boat was to begin at St. Michael?           A. Yes, sir.

Q. And end at Dawson City?           A. Yes, sir.

Q. All their possession in the boat at Portland was for what purpose?

A. The possession of the boat in Portland was for the purpose of fitting her up and taking her up to St. Michaels, where they were to have the use of the boat from St. Michaels to Dawson City, and for having the use of the boat from St. Michaels to Dawson City they were to go to the expense of fitting her up for the sea voyage and take her to St. Michaels free, as far as we were concerned.

(Testimony of witness closed.)

Captain FRANCIS B. JONES, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (By Mr. FLANDERS.) What is your residence?

A. Portland.

Q. Your occupation?           A. Steamboating.

Q. How long have you been steamboating?

A. Eighteen years.

Q. Are you or are you not familiar with the construction of steamboats? A. Yes, sir.

Q. Know all about steamboats?

A. Pretty near. I have built three or four, had them built. :

Q. Are you the Francis B. Jones whose name is signed to the agreement of July 30, 1897, and August 7th, 1897, intraduced in evidence in this case? A. Yes, sir.

Q. You may state whether or not at the time of entering into of these agreements you had any interest in the "Eugene." A. Yes, sir.

Q. What did you do with your interest after that time?

A. Well, I have got my interest in her yet.

Q. In what way have you your interest in her yet?

A. Well, in the first place Geer owned a share and I owned a share, so we entered into a contract and sold it to the Yukon Transportation Company.

Q. And took stock? A. And took stock.

Q. Now, what position do you hold in the Yukon Transportation Company?

A. I am president.

Q. What position did Geer hold in it?

A. He has been general manager,

Q. How long have you held these respective positions?

A. Ever since we entered into that contract.

Q. And transferred the boat?

A. Yes, sir, ever since the transfer of the boat.

Q. Are you familiar with the stockholders of the Yukon Transportation Company? A. Yes, sir.

Q. Have any of the stockholders of the Portland and Alaska Trading and Transportation Company any interest in the stock of the Yukon Transportation Company?

A. No, sir, not a dollar's worth.

Q. Has the Portland and Alaska Trading and Transportation Company or any of its members any interest in the "Eugene" other than whatever interest they may have by virtue of these two contracts to which I have referred?

A. No, sir.

Q. Did they have any possession of it for any purpose except as indicated by the contracts to which I have referred?

A. No, sir.

Q. Are you familiar with the circumstances under which these contracts were entered into, and do you know the parties to them?

A. Yes, sir.

Q. What use was to be made of the "Eugene" under that, and for what purpose were the McGuires to have the use of her?

(Objected to by proctor for libelant, because it is not the best evidence.

A. For what purpose?

Q. For what purpose were they to have the use of her, what was the use contemplated by the owners of the "Eugene" under this agreement?

A. They made a bargain with us to fix up that boat seaworthy at their expense, and take her to the mouth of the Yukon, and tow her or convey her up there for the use of her up the Yukon river, one trip.

Q. For whatever they could make out of the "Eugene," for the trip up the Yukon, from the mouth up to Dawson?

A. What they could make on one trip this last fall.

Q. Were they to have the use of her for the purpose of transporting freight and passengers from any other point than from the mouth of the Yukon?

Objected to by proctor for libelant for the reasons last stated.)

A. No, sir, they were not to do anything else with her; they had no right to use her for anything else than to take her to the Yukon river, because we were talking about that a while afterwards, and they wanted to take her on the Stickeen, and they said they had no right to take her there, because they had no right to do it in place of bringing her back here. They thought they could take her there and run her, but they said they knew they had no right to do that under the contract.

Q. Did you see the repairs that were put upon the "Eugene" for the voyage?

A. Yes, sir.

Q. What was her condition as to her being a seaworthy steamboat when these repairs were begun?

A. Well, so far as my judgment was, it was pretty good. It was pretty well done.

Q. I mean before they started in on the repairs?

A. Before?

Q. What was the age of the "Eugene"?

A. Three years old.

Q. What was her general condition?

A. Pretty good condition; she had a few knees cracked in her; they were not broken clear in two; they were cracked. They put clamps on the side of them, and made them as strong as they ever were.

Q. That made them as strong as they ever were?

A. Yes, sir. They were made as good as ever.

Q. You say you supervised fixing her up for the sea trip?

A. They put a keelson in her from the bottom clear up to the deck, to make her stiff.

Q. Did you superintend or supervise this?

A. I superintended a good deal of the boat, but they had a regular ship carpenter to superintend it, and a good one.

Q. How were these repairs done, what sort of work went into them and what sort of material?

A. They were done in good shape; it was all done good.

Q. It had to be done under the contract, to your satisfaction?

A. Yes, sir.

Q. Was it done to your satisfaction?

A. Not as well as I expected; so far as my judgment for a seaworthy boat, it was done all right.

Q. Was or was not the sea trip of the "Eugene" an experiment or not?

A. Well, it was considered an experiment, because there had never been anyone taken up there before, and no one knew whether she could be taken up or not.

Q. You took the chances, the owners of the "Eugene" took the chances of getting her up there?

A. Yes, sir, we took the chances of getting her up there. If the boat had been lost, we would have lost her, but they had to use the best possible means under the contract to get her there.

Q. Do you know this libelant, Charles Ruff?

A. No, sir. I do not know any of the passengers.

Q. Do you know the libelant, Jacobi.

A. No, sir.

Q. Did the Yukon Transportation Company get any of the passage money of these passengers?

A. No, sir.

Q. Did you have any dealings with the Yukon Transportation Company, have any dealings with the passengers?

A. No, sir, none at all.

Q. You are familiar with the business of the Yukon Transportation Company?

A. Oh, yes.

Q. Do you know anything about these advertisements that are introduced in evidence here by the libelant, alleged to have been published at Seattle by the McGuires?

A. No, I do not know.

Q. Did they have any authority from the Yukon Transportation Company at Portland to publish any of these articles, or to bind the boat by them?

A. No, they did not have any authority whatever.

Q. Did you see the "Eugene" after her return to Seattle?

A. Yes, sir.

Q. When she went on the ways?

A. Yes, sir.

Q. What was her condition?

A. Well, she was leaking considerably around the bow where her seams had been opened and the oakum worked out.

Q. What was the condition of the timbers in the bow?

A. Well I did not go inside of her to look.

Q. Could you see the oakum worked out?



A. Yes, that is all I saw about it; I did not have time to go in her; I had to go to Victoria. I was over there when they had her on the ways there for a few days after they hauled her out and examined her, and they got caulking and went to work and caulked her all the way over.

Q. Judging from what you saw at that time, that is, when she was on the ways, was the condition of the "Eugene" such that she could with safety have proceeded further on that voyage?

A. I do not think she could without being caulked and fixed up again; the "Eugene" was supposed to go up there in good order.

Q. How was her condition when you saw it, compared with her condition when she was leaving Portland?

A. Oh, I don't know; I could not tell much about the condition of the boat, you know, unless you go through and examine her.

Q. Well, judging from what you saw.

A. Oh, when she left Portland, she was all right. She had been caulked and was in good shape, and when I saw her here she looked as though her oakum had worked up considerably around the bow along the knuckles.

Q. You saw her just before she left Portland, after the repairs were completed?

A. Yes, sir, I saw her all the time she was being repaired.

Q. What was her condition then as to her ability to stand the trip?

A. She was in good condition then. I took her to Astoria myself.

Recross-Examination.

Q. (By Mr. HOGAN.) Were you one of the incorporators of the Portland and Alaska Trading and Transportation Company?

A. No, sir. I signed my name when they were got up in the first place to incorporate, but that was all.

Q. You signed the articles of incorporation?

A. Yes, in the first place, for them to organize.

Q. Are you the F. B. Jones mentioned in that letter (showing letter to witness)?

A. I do not know whether I am or not.

Q. I will ask you if the incorporators of that company were not H. P. McGuire, E. B. McFarland, John Yocum, W. W. McGuire, F. B. Jones, and W. S. Mason.

A. This might have been. I signed my name to the incorporation in the first place. They were in a hurry to get the boat and get to work.

Q. You signed your name to the articles of incorporation of the Portland and Alaska Trading and Transportation Company?

A. I don't know whether that was it, but it was just something to organize in the first place.

Q. Please read that letter over and refresh your memory.

A. I guess I put my name to it, and W. S. Mason the same as I did. But he has not a dollar's worth of stock in it.

Q. This letter correctly states the names of the incorporators of that company as far as you know?

A. Yes, when incorporated.

Q. And you are the F. B. Jones mentioned in this letter?

A. Yes, sir, I suppose so.

Q. Now, to refresh your recollection, you were a member of the Portland and Alaska Trading and Transportation Company?

A. I don't know whether you call it a member or not; I signed my name there for the purpose of organizing it; I don't know whether you call that a member or not; I was not an officer.

Q. Do you know what the capital stock of the company was?

A. I did not know anything about the stock.

Q. Well, then, you are mistaken in your testimony as a matter of fact, Mr. Jones, when you say that none of the members of the Portland and Alaska Trading and Transportation Company were members of the Yukon company?

A. Stockholders I said.

Q. But the members—you are a member of that company?

A. No, sir, I don't consider that I am a member of that company; I deny being a member of that company in any shape; if I did sign my name, I did not take a dollar's worth of stock, and I don't know anything about what their company consists of.

Q. When was the Yukon Transportation Company incorporated?

A. Well, I could not say just when—somewheres near about the 6th of August, somewhere along there.

Q. Shortly after the other?           A. Yes, sir.

Q. Now, did the McGuires not undertake this trip to Alaska in connection with the steamship "Bristol" to violate the terms of their contract with you in any way before they turned back—up to that time, had they violated the contract?

A. Well, some of them violated the contract a whole lot. I don't know who done it, whether the "Bristol" themselves or the McGuires. The first had an option on two other boats.

Q. How did they violate it?

A. They did not take either one of the others; they waited for the "Bristol." They were to take her right away; they didn't do it. She lay there seven or eight days at Port Townsend waiting, and they did not take her according to contract at all.

Q. Their breach of contract consisted in the delay?

A. Yes, sir.

Q. But as to the perfecting of arrangements with the "Bristol" and the transportation of these passengers, that was no breach of the contract, as you understood it, was it?           A. No. I don't know as it was particularly.

Q. They had the right under the contract, as you understood it, to do that?

A. Well, I think if you will get the contract between the "Bristol" and the McGuires, that the "Bristol" was to tow them on the inside passage, and they never done it.

Q. That was between them and the "Bristol"?

A. Yes, sir.

Q. Did the McGuires or the transportation company, so far as this expedition was concerned, and the sale of tickets and passengers here, that was no breach of their contract with you, was it?

A. I don't know anything about the sale of tickets.

Q. Do you claim that contract was broken by the sale of tickets to passengers, or the attempt to transfer passengers from here to Dawson City?

A. They did not attempt to transport any passengers on the "Eugene."

Q. What they did then in relation to these passengers was no breach of the contract in itself, if nothing else occurred, that is, they had that right under the contract?

A. I suppose they did—what do you mean, a right to transport the passengers in the way that they did?

Q. Yes, sir, as far as they had gone, or further if the expedition had been successful, but the breach of the contract that you claim consisted in the delays?

A. Yes, sir. That is the breach of the contract that I claim delays.

Q. And not the failure to deliver her up there. You say you took the whole risk of getting her through safely?

A. I took the risk myself of the boat in case of rough weather or anything.

Q. You say it was an experiment.

A. Well, I claim it was an experiment on my part.

Q. And you took the chances of the result?

A. I took the chances of getting the boat up there in the first place; I thought that we were going to start off

right away and get through before the weather got bad, but they waited too long, until the weather got bad.

Q. When was the possession of the boat delivered to the McGuires or the Portland and Alaska Trading and Transportation Company?

A. I suppose they took possession as soon as they started from Portland with it; they had their own captain--Captain Lewis had possession of her; of course, I took her down to Astoria for him, because he did not know the river very well, but he had charge of the boat.

Q. They employed their own captain and crew and pilot?

A. Yes, sir.

Q. Had full charge of the navigation of the vessel from that on?

A. Yes, sir, they had full charge of her.

Q. She has never been back in your possession since then?

A. Yes, I claim we have got possession of it now, excepting the marshal.

Q. But other than the possession you have now, jointly with the marshal, she has never been back in your possession since?

A. Yes, she was in our possession, except the marshal's.

Q. I say, other than that character of possession, she has never been--that is, she has never been formally turned back to you by the McGuires?

A. Yes, I claim that Captain Lewis had charge of the boat, the management of the boat, and that he turned her over to Captain Geer at Port Townsend.

Q. How long before she was libeled?

A. About a week or ten days, I guess.

Q. Did you ever do any business before with the McGuires?      A. Very little.

Q. How long did you know them down there?

A. Did not know them very long.

Q. They are old residents of Portland?

A. They have been there a good while; I did not happen to get acquainted with them.

Q. You are an old resident there?

A. I am steamboating; that don't signify that I get acquainted with people doing business in the city; I am on the Columbia river all the time. I did not know them but a little while before.

Q. I refer you to this addition to this contract of August 7th, 1897; is that your signature to that?

A. Yes, sir, it looks like it.

Q. Did you write the name of the company there?

A. No, that is not my writing.

Q. You do not identify that as your signature?

A. No, I don't, but still it looks a little like it, but I don't think it is.

(Proctor for libelant desires to object to the introduction of the slip of paper attached to the contract of August 7th, 1897, it having been introduced without the knowledge that it was attached to the contract, and we ask now to have it stricken out upon the ground that Mr. Jones cannot identify the signature to the paper which purports to have been signed by him.)

Q. Now, the strain and damage that you noticed about

the "Eugene" on her return to Seattle may have been caused largely by the towing of the vessel, might it not? A 900 foot cable is pretty heavy.

A. I suppose the towing through rough weather might do it. I think that might be possible, but I could not say as to that. I don't know how that would be.

Q. Opinions seem to be that the towing was as bad as the weather?

A. The opinions seem to be that the towing was un-called for.

Q. What would a cable 900 feet weigh?

A. I don't know. I don't know how big it was.

Q. That would be a very heavy cable for that vessel?

A. Yes, sir—not amount to a great deal.

#### Redirect Examination.

Q. (By Mr. FLANDERS.) Have you any stock in the Portland and Alaska Trading and Transportation Company? A. No, sir.

Q. Did you ever have any stock in that company?

A. No, sir, never had any.

Q. Were you an officer or director of the corporation?

A. No, sir.

Q. How did you happen to sign the articles of incorporation?

A. Well, I was called there to see them about this thing making a dicker, before we entered into any certain contract, and they wanted to incorporate a company. And they asked me to sign it so that they could incorpo-



rate and go ahead with it. They got Mason to sign it in the same way, and this other man, Yocum, down there, in the same way. I never had a dollar in it.

Q. Have you ever been at any of their meetings?

A. Never attended any meetings.

Q. Ever sign any papers?

A. No, sir.

Q. Now, Captain, you have been cross-examined about the contract between the McGuires, or rather the Portland and Alaska Trading and Transportation Company, and Davidge & Company; did you ever see that contract?

A. No.

Q. Do you know what the terms of it was?

A. Only what they told me.

Q. What did they tell you?

A. They told me that they had contracted with them to take them, and they were to leave Victoria on the 22d of August. And they were in a hurry to get us over there, and we got over here and lay for seven or eight days—laid till about the 30th.

Q. That's all you know, what the McGuires told you?

A. Yes.

Q. Do you know anything about the method or manner in which McGuires, Davidge or anybody sold tickets here in Seattle—do you know anything about the way in which they sold them to persons?

A. No, all I know about it is what I heard; I just heard—they told me they were selling them on the "Bristol" to go to St. Michaels, and from St. Michaels they

were to be transferred to the "Eugene," if they got her up there.

Q. Now, you don't know yourself much about how these transactions were had by the Portland and Alaska Trading and Transportation Company with these passengers? A. No, I do not.

Q. Of your own knowledge?

A. No, I don't know anything about it; I know in Portland how they were offering to sell them to passengers.

Q. What were they doing there?

A. Why, when I have been in there, the passengers have asked them, suppose that they didn't get through with the "Eugene," what they were going to do with them, and they told them they would have to take the same chances as well as themselves, but they expected to get her through, they thought there would be no doubt but what they would get her through, but they could not guarantee against any elements.

Q. Did you ever authorize or did the owners of the "Eugene" ever authorize the Portland and Alaska Trading and Transportation Company to warrant that the "Eugene" would arrive at St. Michaels?

A. No, sir.

Q. Or to sell tickets on the "Eugene" to begin at any other point than St. Michaels if she got there?

A. No, sir, I did not.

Q. Did they have any authority to deal with the "Eugene" other than as embraced in these two contracts?

A. No, sir, not that I know of. I had been dealing

with them myself pretty much; they didn't have any authority to deal in any other way than as in these contracts.

Q. From what point to what point did they have authority to sell tickets on the "Eugene"?

A. From St. Michaels to Dawson City.

Recross-Examination.

Q. (By Mr. HOGAN.) Now, Mr. Jones, it was understood with the McGuires that the "Eugene" would have to be towed there by some vessel?

A. Either convoyed in some way.

Q. And it was talked of that that vessel would take passengers, was it not?      A. Yes, sir.

Q. Even before this agreement was signed?

A. Yes, sir.

Q. And secure passengers?      A. Yes, sir,

Q. And she would have the "Eugene" in convoy or tow?      A. Yes, sir.

Q. And if towed to St. Michaels there the passengers would be transferred to her; now, that whole arrangement was talked over, and that was the very purpose of their getting possession of the "Eugene"?

A. Yes, to handle passengers and freight.

Q. You knew afterwards they were selling tickets for the voyage?

A. I knew they sold tickets, yes. They did not sell tickets on the "Eugene," I don't think.

Q. Well, for the voyage?

A. They sold them on the "Bristol."

Q. They were taking passage money from passengers to be delivered at Dawson City?

A. I do not know whether they took passengers, you know, to be delivered when there or not.

Q. You said you heard some passengers at Portland talking?

A. Oh, I heard them come in there and talk to the manager there or the ticket agent there.

Q. About the trip to Dawson City?

A. McFarland and even in Davidge's office both.

Q. That was a trip to Dawson City they were talking about?

A. Yes, a trip through to Dawson City; they came in there to find out what the assurances were of the company that they would get the "Eugene" through, and they told them that they could not guarantee anything against the elements, but they expected to get her through; if weather was good, they would get her through.

Q. That was at Portland? A. Yes, sir.

Q. Now, you made no objections to their selling these tickets?

(Objected to by proctor for claimant as irrelevant.)

A. Oh, no.

Q. You considered they were authorized to do that under the contract, did you not?

(Objected to by proctor for claimant as immaterial.)

A. Well, I suppose they had, yes. I don't know; I suppose they had a right to sell tickets.

Q. They were to get the "Bristol" or some other ves-

sel to tow her up there, and take the passengers and baggage to St. Michaels, and from there they would be transferred?

A. They sold on the "Bristol." I don't know whether they sold any on the "Eugene" or not; I do not think they did.

(Testimony of witness closed.)

(Proctor for libelant offers in evidence letter from secretary of state of Oregon, marked Libelant's Exhibit "AE.)

Hearing adjourned until Nov. 20, 1897, 2 P. M.

C. W. GOULD, recalled on behalf of the claimant

Q. (By Mr. FLANDERS.) Mr. Gould, you are the Mr. Gould who testified on behalf of the libelants before the commissioners, are you not?

A. I testified—I do not know on whose behalf.

Q. You are the Mr. Gould from whom Ruff and Jacobi said they bought their tickets? A. Yes.

Q. You are the C. W. Gould? A. Yes.

Q. These tickets were signed by Mr. McFarland, as general manager of the Portland and Alaska Trading and Transportation Company, were they?

A. Yes, sir, as I recollect.

Q. Delivered to you signed?

A. Yes, sir.

Q. You sold tickets to them and others?

A. Yes, sir.

Q. Were you in charge of the Seattle office?

A. Mr. McGuire was there and had as much to do or say, I guess, as anybody; but I was supposed to handle the money and the tickets and sell the tickets.

Q. I will ask you whether or not you ever guaranteed to these libelants or anybody else that the "Eugene" would in fact survive the trip?

A. No, sir, I never guaranteed to anybody that they would survive, absolutely refused to guarantee anything.

Q. Did you ever have any conversation with any of these passengers in regard to the chances of the "Eugene" arriving at St. Michaels?

A. Yes, sir.

Q. What did they say to you and what did you say to them?

A. Nearly every passenger with whom I conversed upon requesting information would ask me if we were guaranteeing to take them through to Dawson City. My answer always was that I could not guarantee anything. That they would have to take their own risk, and if they did not feel disposed to run any risk I would advise them not to go. Mr. McGuire, on the other hand, would tell the passengers, and did tell them in my presence, that he would take them through, providing they stay with the boat.

Q. With the boat?

A. Yes, sir.

Q. Were you ever authorized to guarantee that the boat would arrive at St. Michaels, the "Eugene" would arrive at St. Michaels?

A. No, sir.

Q. As I understand you, you never did promise that she would make the trip?

A. I never did promise that, sir.

Cross-Examination

Q. (By Mr. HOGAN.) You mean that you yourself, personally, Mr. Gould, did not make any guarantees?

A. That is what I mean.

Q. Did you know that guarantees were made by the McGuires and others, or what amounted to guarantees, if they stayed by the boat they would get through?

A. A great many asked the McGuires if they would guarantee to take them through; I heard him tell them that he would take them through if they would stay with the boat.

Q. He told them that the boat was bound to reach there this fall, did he not?

A. Well, he told them that he thought there was no doubt but what it would reach there; he said that he could not guarantee anything; he could not guarantee that the boat would get there, as it might be an impossibility.

Q. Well, he spoke to them in the line of these advertisements in the "P. I.," did he not? That the vessel would arrive there on the 11th or 15th of September—that was his talk, was it not?

(Objected to by proctor for claimant as immaterial.)

A. When it comes right down to the matter of fact, I could not say that I ever heard him say that the boat would positively reach Dawson City last fall.

Q. But did not he give passengers to understand that it would in all his talks with them—do not you believe that they received the impression from the conversation with him that they would reach there this fall?

(Objected to by proctor for claimant as incompetent.)

A. Well, as far as my opinion goes, I think they did.

(Proctor for claimant moves to strike the answer of the witness because it is a matter of opinion.)

Q. The McGuires were noted for their talk, were they not—that is, they were inclined to make big promises, were they not?

(Objected to by proctor for claimant as irrelevant.)

A. Well, do you wish just my opinion on that? I cannot vouch for other people's opinions.

Q. Well, what you saw there in your office of their ways of carrying on this business, the sale of tickets to passengers.

A. Well, I think they were able to represent their interest beyond question.

#### Redirect Examination.

Q. (By Mr. FLANDERS.) You say you made no guarantee yourself that the boat would reach Dawson City. Did you make any guaranty or promise on behalf of the "Eugene" herself or on behalf of the Portland and Alaska Trading and Transportation Company that she would reach there?

A. I made no guarantee on behalf of anyone for their boat.

Q. (By Mr. HOGAN.) Now, as a matter of fact, Mr.



Gould, you considered it your business to merely sell tickets and when anything pertaining to the voyage came up it was referred to McGuire, was it not?

A. Yes, when anything came up in regard to the responsibility of the boats—for instance, as to getting the “Eugene” up the river and other matters that I did not think come within my jurisdiction as an agent for the sale of tickets—the passengers were referred to the McGuires. I says, “Here’s the owner of the ‘Eugene’; let them answer these questions themselves.”

Q. And you were there to receive the money and take care of it and deliver the tickets?

A. I was there simply to receive the money; I did not suppose that I would have handled the tickets at all if it had not been for securing the charter money to the Davidges.

(Testimony of witness closed.)

Capt. JOEL P. GEER, recalled on behalf of claimant:

Q. (By Mr. FLANDERS.) I hand you this paper and ask you what it is.

A. That is a license, license of the steamer “Eugene”; also indorsements for masters.

Q. A portion of the papers of the “Eugene” which you have in your possession as her master?

A. Yes, sir.

Q. You are required to keep this on board of the vessel?

A. Yes, sir.

(Proctor for claimant offers paper in evidence. Objected to by proctor for libelants as immaterial. By

agreement copy substituted for original and original withdrawn.)

**Claimant's Exhibit No. 4.**

Permanent	Official number.
License No. 6.	Numerals.
	136, 424.

The United States of America.

Art. 31, Customs Regs. 1892.	Cat. No. 541.
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Sec. 4321, Rev. Stats.

License for Enrolled Vessel.

License for carrying on the Coasting Trade.

In pursuance of Title L: "Regulations of vessels in domestic commerce," of the Revised Statutes of the United States, F. B. Jones, of Portland, Oregon, president of the Yukon Transportation Company, of Portland, Oregon a corporation, and C. H. Lewis, of Portland, Oregon, master, that the steamboat called the "Eugene," whereof the said C. H. Lewis is master, burden 271 tons and 88 hundredths, as appears by her enrollment, number three, dated at District of Willamette, August 18, 1897, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified, license is hereby granted for the said steamboat called the "Eugene" to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

This license does not grant the right to fish for mack-

erel, other than for what is known as Spanish mackerel, between the first day of March and the first day of June, inclusive, of this year.

Given under my hand and seal at the Port of Portland, Oregon, in the District of Willamette, this eighteenth day of August, in the year one thousand eight hundred and ninety-seven.

[Collector's Seal]

THOMAS J. BLACK,

No.

Collector of Customs.

Naval Officer.

“Indorsement of Change of Master.

District of Puget Sound,

Port of Port Townsend, Sep. 9, 1897.

Joel P. Geer, having taken the oath required by law, is at present master of the within named vessel, in lieu of C. H. Lewis, late master.

CHAS. MILLER,

Dep. Coll. of Customs.”

(Indorsed:) “Permanent license for enrolled vessel. License No. 6 of the steamboat ‘Eugene,’ 271.88 tons. Issued at the port of Portland, Oregon, District of Willamette, Aug. 18, 1897.”

Q: I hand you this paper and ask you what it is.

A. It is authority for me to act as manager.

Q. Handed you by whom?

A. By the Yukon Transportation Company.

(Paper offered in evidence by proctor for claimant. Objected to by proctor for libelant as irrelevant and immaterial. By agreement, copy of document inserted in the record and original retained by witness.)

**Claimant's Exhibit No. 5.**

"Know All Men by These Presents, that Joel P. Geer was at a meeting of the directors of the Yukon Transportation Company, of Portland, Oregon, appointed manager of said company, with the power and authority to take charge of and manage the property of said corporation in Alaska and the British Northwest possessions, and especially the steamboat 'Eugene,' and likewise to act as captain of said vessel, and to discharge the duties usually appertaining to such office.

In witness whereof, the said Yukon Transportation Company of Portland, Oregon, has duly caused these presents to be signed by its president and secretary, and its corporate seal to be hereto attached, this 16th day of August, 1897.

YUKON TRANSPORTATION COMPANY OF  
PORTLAND, OREGON,

By F. B. JONES, President.

YUKON TRANSPORTATION COMPANY OF  
PORTLAND, OREGON,

[Corporate Seal] By GEO. GOOD, Secretary."

Executed in presence of:

G. M. Stearnes.

Q. Now, what was the draught of the "Eugene" at the time she turned back?

A. I think about 26 inches.

Q. She had no freight aboard, as I understand?

A. No, sir, only the outfits for the crew.

Q. Do you know what representations may have been

made by either H. P. McGuire or W. W. McGuire or Mr. Gould to any of these people who purchased tickets?

A. I do not.

Q. Did they have any other control over the boat other than the control that they might have had by virtue of these two contracts that are in evidence here?

A. None whatever.

Q. Did you ever authorize them to represent to any purchasers of any tickets that the "Eugene" would in fact arrive at St. Michaels and there undertake the voyage to Dawson City?

A. No, sir, and it was expressly understood between us that it was very likely that she might not arrive, and they were taking that risk.

Q. Would or would not any such representations, if made, have been in violation of your contract and your understanding?

(Objected to by proctor for libelant as calling for a legal conclusion.)

A. Yes, sir, in my opinion I should consider it would be a violation.

CrossExamination.

Q. (By Mr. HOGAN.) This license purports to have been issued August 18th, 1897, at Portland?

A. Yes, sir.

Q. Were there any charges attached to the issuance of that license?

A. No, sir.

Q. This license was obtained for the purposes of this trip, was it not?

A. No, sir; that license was obtained when the boat changed ownership from F. B. Jones and myself to the Yukon Transportation Company, and that always has to be done.

Q. Was she licensed before for the coasting trade?

A. Yes, she had exactly the same kind of a license as that.

Q. The same license before?

A. Yes, the same exactly.

Q. This license in no way abrogated or changed the contract which you had made with the McGuires?

A. Nothing to do with that contract.

Q. It left that contract valid still?

A. The contract stood just the same.

Q. And the rights of the original owners who made the contract with the McGuires, these rights were transferred to the Yukon Company, subject to the contract with the McGuires?      A. Yes, sir.

Q. So you considered that the matter stood just the same as if the Yukon company had made that contract with the McGuires?      A. Yes, sir.

Q. Do you know whether these contracts were filed with the collector down there?

(Objected to by proctor for claimant as immaterial.)

A. Not to my knowledge.

Q. The master of the vessel here mentioned in this license was C. H. Lewis. He was employed by the Portland and Alaska Trading and Transportation Company?

A. Yes, sir.

Q. At the time this license was obtained he was in their employ?           A. Yes, sir.

Q. The vessel was in their possession at that time?

A. As I stated yesterday, to a certain extent the vessel is always in the possession of the Yukon Transportation Company since that company has been formed, and was so recorded on the books and never was recorded any place else.

Q. But the Portland and Alaska Trading and Transportation Company had control of the vessel?

A. Yes, sir.

Q. They did have control?           A. Yes, sir.

Q. At the time this license was obtained?

A. Yes, sir.

Q. They were fitting her up at that time, were they?

A. Yes, sir.

Q. At their own expense?           A. Yes, sir.

Q. And they had employed a crew and were paying them?           A. Yes, sir.

Q. Had complete charge and control of the navigation of the vessel on the trip?

A. Yes, but they were not paying all of the crew.

Q. I understand nobody was paying a portion of the crew.

A. I do not know about a portion of the crew; I know the Yukon Transportation Company was paying a portion of it.

Q. A portion of the crew was paying them, I understand?

(Objected to by proctor for claimant as immaterial.)

A. No, sir.

Q. You were on board of the "Eugene" at the time when she was at Comox and when she put out of there for Alaska, were you?      A. Yes, sir.

Q. She had been seized by the Canadian officials at that place?

(Proctor for claimant objects as immaterial and irrelevant.)

A. That is what I understood.

Q. She escaped from them, did she not?

A. She left; I do not know anything about her escaping. I had nothing to do with it whatever. I was over on the "Bristol," and some one told me that the "Eugene" was going to leave; I came over and she left; I was not at the wheel.

Q. You were on board of her when she left?

A. I was on board when she left. I was on the "Bristol" when I heard she was going to leave.

Q. Did you see the Canadian official aboard of her?

A. Yes, I was on board of her.

Q. Had he tacked up a notice?      A. No, sir.

Q. Had he served any notice there?

(Proctor for claimant objects as immaterial and irrelevant, and desires the objection to apply to all this line of examination.)

Q. Served no papers?      A. Not on me.

Q. You understood that he had attached her?

A. I understood that.

Q. How long after that did she put out?



A. I don't know; about 18 or 20 hours, I should judge—possibly more.

Q. In the absence of the officials of the Canadian government?  
A. Yes, sir.

Q. What hour of the day was that?

A. When we left?

Q. Yes, sir.      A. I think about 11 o'clock.

Q. You made no objection to the McGuires on account of their employing a vessel on this trip in the manner they did, did you?  
A. No, sir.

Q. You considered that that was in accordance with that contract, did you?

A. No, sir; they were to have a lighter vessel to tow her.

Q. Otherwise was that the only objection?

A. There was another objection; they were to take the inside passage, and we strenuously objected to their doing anything else.

Q. Could this vessel have made the trip if you had taken the inside passage?

A. That I do not know, I thought so; she would have stood a great deal better chance to have made the trip on the inside passage. As a matter of fact we started a week or ten days later than the agreement was, and I protested at the time we started.

Q. It is your opinion that she could have made the trip if they had taken the inside passage?

A. She may, but it was very late in the season to attempt to make the trip at all; I protested against leav-

ing so late in the season by telegram from Port Angeles to Victoria.

Q. Still you went on the voyage?

A. We went on the voyage.

(Testimony of witness closed.)

Capt. F. B. JONES recalled on behalf of claimant:

Q. (By Mr. FLANDERS.) Do you know the circumstances under which these libelants bought tickets from Mr. Gould or the McGuires here?

A. No, I don't know anything about here in Seattle.

Q. Do you know any representations that were made by any of these persons to them?

A. No, sir, I do not know of any.

Q. Did you ever give the Portland and Alaska Trading and Transportation Company or Davidge & Co., or any of their officers or agents, any authority to warrant or represent that the "Eugene" would in fact arrive at the Yukon river or do anything more than to make the attempt?

(Proctor for libelants objects as irrelevant and immaterial.)

A. No, sir, I did not give them any authority whatever.

Q. Did any of the owners of the "Eugene" ever give them such authority?

A. No, sir, never any of the owners of the "Eugene" had any right to do that.

#### Cross-Examination.

Q. (By Mr. HOGAN.) You say it was the intention,

Mr. Jones, when this boat was let to the McGuires that they would carry passengers in this manner to Alaska, was it not?      A. No, sir, it was not.

Q. Did they not contemplate carrying passengers—I mean on board another vessel which would tow the “Eugene” up?

A. They expected to carry passengers on the “Bristol” or on some other boat.

Q. It was the intention to carry them on the “Bristol” or some other boat having in tow the “Eugene”?

A. Well, towing her or convoying her, one of the two,

Q. And so far there was no breach of the contract on the part of the McGuires in undertaking to transfer passengers in that manner, taking them aboard the “Bristol,” having in tow the “Eugene” or convoying the “Eugene”?

A. There was no contract that they were to carry anything on the “Eugene” at all until they got to the mouth of the Yukon river.

Q. But they were to take passengers on another boat having in tow the “Eugene”?      A. Some other boat.

Q. It was contemplated when the contract was made.

A. Yes.

Q. The very purpose of making the contract was to bring the “Eugene” up in that manner and carry passengers on another boat, and transfer them at St. Michaels, was it not?

A. Well, I suppose that was the intention.

Q. And in so far as the McGuires did that there was no breach of the contract between them and the owners?

A. Not that I know of, only in regard to their representing that the "Eugene" would surely get through; that they never done, I don't think, because as far as I know I heard passengers ask myself, and they told them that they could not guarantee to get them through.

Q. That was at Portland?           A. Yes, sir.

Q. You were never at Seattle during that time?

A. I was not at Seattle; I don't know what they done here.

Q. You do not know what representations were made to the passengers here?           A. No, sir.

#### Redirect Examination.

Q. (By Mr. FLANDERS.) Captain, did you not at the time that contract was entered into know how the "Eugene" was to be taken up to St. Michaels, whether by towboat or by passenger steamer or not, or freight steamer?

A. Well, in the first place, they said they would tow her with a tug.

Q. Was that when the contract was signed or not?

A. Yes, that was when the contract was signed, and of course afterwards I found out they calculated they would tow her with any kind of a steamer they could get.

(Testimony of witness closed.)

It is admitted that there was filed in the office of the collector of customs of Portland, Oregon, in the District of Willamette, on August 21, 1897, duplicate contract dated August 7th, 1897, between the Willamette and Co-

lumbia River Towing Company and Joel P. Geer, of the first part, and the Alaska Trading and Transportation Company, being Claimant's Exhibit 3 in this case.

District of Washington, }  
County of King.            } ss.

I hereby certify that the foregoing record, from page 1 to page 253, both inclusive, contains all testimony offered by libelant and claimant in the foregoing entitled cause; that said testimony was taken at the time and place therein mentioned; that each of said witnesses were duly sworn by me before testifying; that by agreement of proctors I reduced the testimony of said witnesses to writing in shorthand, and proctors for the libelants and claimant stipulated and agreed that the testimony of said witnesses as transcribed by me should be taken as the testimony of said witnesses, the same as if duly signed by them; and I certify that the testimony of said witnesses as transcribed is the testimony given by said witnesses. I return herewith the several exhibits introduced by libelant (from "A" to "AE") and claimant ("1" to "5").

Witness my hand and official seal this 27th day of November, 1897.

[Seal]

A. C. BOWMAN,  
U. S. Commissioner.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

THE STEAMBOAT "EUGENE."

GASTON JACOBI and CHAS. RUFF,

Libelants.

JOEL G. GEER,

Claimant.

**Deposition of C. H. Lewis.**

It is hereby stipulated that the depositions of George Good, E. B. McFarland, and C. H. Lewis for claimant may be taken at Portland, Oregon, before clerk U. S. District Court or any U. S. Commissioner, upon the interrogatories, direct and cross, hereto attached, without the issuance of a commission or any formalities other than the administration of an oath, such testimony to be received at the trial of this cause, subject to any objections as may there be made as to relevancy, competency, or materiality. Said witness Lewis may sign the stenographic notes of the reporter. Said testimony shall be returned by the time set for trial, and such trial shall not be postponed by reason of its nonreceipt. Proctors for neither party shall be present when such testimony is taken, and said officer shall certify to the fact of such

absence, otherwise such depositions shall not be received in evidence.

STRUDWICK & PETERS, and  
WILLIAMS, WOOD & LINTHICUM,  
Proctors for Claimant.  
JOHN C. HOGAN,  
PATTERSON & EARLY,  
Proctors for Libelants.

Interrogatories to be propounded to C. H. Lewis, witness on behalf of claimant.

1. What is your name and present occupation?
2. What experience, if any, have you had as a navigator upon the waters between the Columbia river and Yukon river.
3. Do you know the "Eugene"? If so, for how long?
4. Were you on the "Eugene" at the time of the transaction in controversy? If so, state when you joined her and in what capacity and how long you remained in that capacity on her.
5. If you were on the "Eugene" between the Columbia river and Straits of Fuca testified to by Capt. Geer, describe the weather and how the boat acted.
6. Describe the weather from the time the "Bristol" overtook the "Eugene" north of Comox until she turned back into Alert Bay, and particularly describe the weather, wind, and sea the day on which she put back.
7. How did the "Eugene" behave during said trip, and how during the last day.

8. Describe the circumstances under which you turned back.

9. When did you first see the libelants Ruff and Jacobi? Did you have any dealings with them? If so, state what they were.

11. Did you examine the "Eugene" after she had put in Alert Bay? If so, state her condition, and to what causes do you attribute the same.

12. State the circumstances under which the passengers on the "Bristol" returned to Victoria.

13. If you know anything more about the matters in controversy state, the same in full.

WILLIAMS, WOOD & LINTHICUM,  
STRUDWICK & PETERS,

Proctors for Claimant.

Cross-interrogatories to be propounded to C. H. Lewis.

Cross-Int. 1. Captain, a paper in the form of a letter signed by you has been introduced in evidence, and is now copied in this interrogatory, and is as follows:

"Alert Bay, Sept. 6, 1897.

Capt. McIntyre.

Dear Sir: Yours received, and contents noted. I must say that the steamer 'Eugene' is not in a fit condition to proceed with the steamer 'Bristol' on her voyage north. We will have to remain here until towed out or conveyed by some steamer.

To Capt. Jas. McIntyre, Master S. S. 'Bristol.'

Yours respectfully,

C. H. LEWIS,  
Master of Str. 'Eugene.'"



You remember the circumstances of the giving of that letter to Capt. McIntyre, do you?

Int. 2. And you sent this letter at the time it is dated, did you?

Int. 3. That letter was sent Capt. McIntyre with your knowledge and consent, was it?

Int. 4. And you recollect of signing a letter similar to the one of which the above is a copy?

JOHN C. HOGAN, and  
PATTERSON & EARLY,  
Proctors for Libelants.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

THE STEAMBOAT EUGENE.	}
GASTON JACOBI and CHAS. RUFF,	
	Libelants, }
JOEL P. GEER,	}

Pursuant to the annexed stipulation, appointing me, E. D. McKee,, clerk of the District Court of the United States for the District of Oregon, a commissioner to take the depositions of C. H. Lewis, E. B. McFarland, and George Good, witnesses on behalf of the claimant in the above-entitled cause, in answer to the interrogatories and cross-interrogatories thereto annexed, I proceeded to take the depositions of said witnesses at my office in the city

of Portland, Oregon; said witness C. H. Lewis appearing before me and testifying on Monday, November 22, 1897; and said witnesses E. B. McFarland and George Good appearing before me and testifying on Tuesday, November 23, 1897; and said witnesses, having been by me first duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

C. H. LEWIS, a witness on behalf of the claimant, being first duly sworn, testified as follows.

#### Direct Interrogatories.

1. What is your name and present occupation?

A. C. H. Lewis, chief officer of the steamship "Oregon."

2. What experience, if any, have you had as a navigator upon the waters between the Columbia and Yukon river?

A. My experience between the Columbia river and the Yukon river—I have had experience on the waters of the Columbia river to the Alaskan waters, an experience of five years as mate and master. And I have been several trips to the Yukon river on sailing vessels.

3. Do you know the "Eugene"? If so, for how long?

A. I know the "Eugene" by seeing her on the river, as a river boat here, and my experience on her going from here to Puget Sound, and from Puget Sound to Alert Bay. I have known her for about three months.

4. Were you on the "Eugene" at the time of the transaction in controversy? If so, state when you joined her

and in what capacity, and how long you remained in that capacity on her.

A. Yes, sir. I joined the "Eugene" on the 20th of August, 1897. Went from here to Puget Sound on her. I joined her as master of her—captain; remained on her as captain up to the 11th of September, or 12th; I am not certain of dates I think it was the 11th.

5. If you were on the "Eugene" between the Columbia river and Straits of Fuca testified to by Captain Geer, describe the weather, and how the boat acted.

A. The weather we had from the Columbia river to Puget sound was common, ordinary weather, strong northwest wind, which we generally have at that time of the year; and the boat acted in that weather very well for a river boat. We went through all right.

6. Describe the weather from the time the "Bristol" overtook the "Eugene" north of Comox until she turned back into Alert Bay, and particularly describe the weather, wind, and sea the day on which she put back.

A. The morning of the day the "Bristol" picked us up, at the northwest end of Vancouver's Island, abreast of Fort Rupert, the weather was fine, but looking threatening and glass falling. It kept fine till eleven o'clock A. M., when it commenced to increase from the southeast, and by two P. M. was blowing a strong gale—was short, choppy sea running. That was the morning he picked us up. At noon on the same day, when we turned back, it was blowing a strong gale from the southeast, and the ship was showing signs of breaking up, and the crew protested to going further, and desired to be turn-

ed back with the ship. I hailed the steamship "Bristol," and signalized her to turn back to a port of safety, for the ship was breaking up. He turned back at two P. M. and proceeded for Alert Bay. It blew a strong gale all night, and the ship received damage during the gale, which made her unseaworthy and not fit to proceed any further north. We arrived in Alert Bay on the following morning, I forget the exact morning or exact date. But when we arrived there, there was a survey held on the ship, on the steamer "Eugene," by four men—two sea captains and two ship's carpenters. They pronounced the ship damaged and unseaworthy, and not fit to proceed further north.

7. How did the "Eugene" behave during said trip, and how during the last day?

A. The "Eugene" behaved very well for a river boat at sea. On the trip after we turned back to Alert Bay, when we held a survey on her, and these people surveyed her and pronounced her unseaworthy, she behaved as well as any river boat could in such a gale of wind. She was out of her element. She got in a gale of wind at sea, and behaved as well as any boat of her class could.

8. Describe the circumstances under which you turned back.

A. We found the ship was breaking up, and turned back in order to save her and the life of the people on board.

9. When did you first see the libelants Ruff and Jacobi?

A. I don't know either one of the gentlemen. I nev-

er met them, to my knowledge, any more than any other passengers on the ship.

10. Did you have any dealings with them? If so, state what they were.

A. I never had any dealings with them of any kind; would not know them if I saw them.

11. Did you examine the "Eugene" after she had put into Alert Bay? Is so, state her condition, and to what causes do you attribute the same.

A. Well, we held a survey on the steamer after we arrived in Alert Bay, by four men—two sea captains and two ship's carpenters; found several of her timbers broken on the port and starboard side, and several broken on the bow; found the oakum out of her seams; and she was making water freely. After they held a survey on her, they pronounced her unseaworthy and not fit to proceed any further north. I attribute the same to the rough usage she received at sea, in tow of the "Bristol"—the force of the wind and sea.

12. State the circumstances under which the passengers on the "Bristol" returned to Victoria.

A. Well, as far as I know the circumstances of their return to Victoria was that the "Eugene" was not able to proceed further north, and they had to turn back. They were all satisfied, to a man, to turn back.

13. If you know anything more about the matters in controversy, state the same in full.

A. Well, I don't know any more about it, only that I have a log of the ship from the time we left Portland, Oregon, till we arrived in Puget sound; from thence to

Comox, from Comox to Alert Bay, to sea and return—describing the full particulars of the trip. If you wish to have the log—it is a copy of the log I kept on the ship—if you wish to have that copy for reference, you can have it.

### Cross-Interrogatories.

1. Captain, a paper in the form of a letter signed by you has been introduced in evidence, and it now copied in this interrogatory, and is as follows:

“Alert Bay, Sep. 6, 1897.

Capt. McIntire.

Dear Sir: Yours received, and contents noted. I must say that the steamer ‘Eugene’ is not in a fit condition to proceed with the steamer ‘Bristol’ on her voyage north. We will have to remain here until towed out or convoyed by some steamer.

To Capt. Jas. McIntyre.

Yours respectfully,

C. H. LEWIS,

Master of Str. Eugene.”

You remember the circumstance of the giving of that letter to Capt. McIntyre, do you?     A. I do.

2. And you sent this letter at the time it is dated, did you?     A. Yes.

3. That letter was sent Capt. McIntyre with your knowledge and consent, was it?

A. Yes. It was sent to him in answer to a note I received from him. He sent me a note telling me that his

ship was going to proceed to sea at ten o'clock the following morning, and wanted to know if I was ready to proceed on the voyage with it; and I wrote him that note telling him that I was not, and stating the condition of the ship.

4. And you recollect of signing a letter similar to the one of which the above is a copy?           A. Yes.

United States of America, }  
District of Oregon.        } ss.

I, E. D. McKee, clerk of the United States District Court for the District of Oregon, hereby certify that unde and in pursuance of the stipulation hereto annexed, the witness C. H. Lewis, on behalf of claimant, appeared before me on November 22, 1897, and the witnesses E. B. McFarland and George Good appeared before me on November 23, 1897, and were examined upon the written interrogatories and cross-interrogatories attached to such stipulation; said witnesses being examined in the presence of myself and the reporter alone, proctors for neither party or other persons being present. And said witnesses severally made the answers to said several interrogatories and cross-interrogatories hereinbefore set forth. Said answers were taken down in shorthand, and thereafter extended by the reporter; and said testimony when extended, was read over and signed by the witnesses E. B. McFarland and George Good, their several signatures appearing at the close of said respective depositions; the signature of said C. H. Lewis to his own

deposition after extension being waived by the respective parties, according to said deposition.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Portland, Oregon, this 24th day of November, 1897.

[Seal U. S. District Court]                      E. D. McKEE,  
Clerk United States District Court for the District of Oregon.

[Endorsed]: Depositions of C. H. Lewis, E. B. McFarland, and Geo. Good. Published and filed Nov. 29, 1897. In the United States District Court. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

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November 30, 1887.

General Order Book, D. C., vol. 3, page 433.

GASTON JACOBI,	}	1128.
vs.		
STMR. "EUGENE," etc.		

### Minute Order.

Now, on this day, this cause coming on for final hearing, the Court, after hearing argument of respective counsel, takes said matter under advisement.



*In the District Court of the United States, for the District  
of Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE,

Respondent.

### **Order of Default.**

The marshal having returned, on the monition issued in the above-entitled action, that he had attached the said vessel, her tackle, apparel, and furniture, and had given due notice to all persons claiming the same that the said court would on the 7th day of Oct., 1897, proceed to trial and condemnation of said vessel, her tackle and furniture, and the time within which appearance might be made or claims interposed herein having long since expired, and no persons appearing herein, except Joel P. Geer, claimant, and the intervenors, Fred M. Lyons, Walter M. Cary, and Edward J. Knight, and C. Hennigar, therefore on motion of libelant's proctor, it is ordered that the defaults of all persons be and the same is hereby en-

tered with the exception only of the above named claimant and intervenors.

Dated this 7th day of Dec., 1897.

C. H. HANFORD,  
Judge.

Recd. copy hereof this Dec. 6, 1897.

STRUDWICK & PETERS,  
Attys. for Claimant Joel P. Geer.

[Endorsed]: Order of Default. Filed Dec. 7, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy

*In the District Court of the United States for the District of Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE,

Respondent.

JOEL P. GEER,

Claimant,

And FRED N. LYONS, WALTER M.

CARY, and EDWARD J. KNIGHT,

Intervenors.

### **Final Decree.**

The monition and attachment issued in the above-entitled cause having been heretofore duly returned, and the

default of all persons except the above-named claimant and intervenors having been duly entered herein, and this cause coming on regularly to be heard upon the pleadings and proofs of the respective parties herein, and argued by the proctors of the respective parties, and after due deliberation being had in the premises, the Court finds that all of the material allegations of the libel are true, and that the libelants are entitled to recover herein, and the Court having assessed the amount of said libelants' recovery at the sum of eight hundred dollars (\$800.00) for each of the libelants, and it appearing to the Court that the said steamer "Eugene" is liable in specie for the payment of said amount to each of the libelants, therefore, on motion of proctor for libelants,

It is hereby ordered, sentenced, and decreed that the said steamship "Eugene," her tackle, apparel, and furniture, be, and the same hereby are, condemned for the payment of the aforesaid amounts, to-wit, for the payment of the sum of eight hundred dollars to the libelant Gaston Jacobi, and for the further sum of eight hundred dollars to the libelant Charles Ruff, together with the costs and disbursements of this action, taxed at the sum of —— dollars.

And a stipulation having been duly entered into and filed in this cause by the respective parties, wherein it is stipulated and agreed that the intervenors Fred M. Lyons, Walter M. Cary, and Edward J. Knight shall abide the result of the trial of the issues between libelants and claimant herein, and shall be entitled to the same recov-

ery upon their intervening libels herein as might be recovered by the principal libelants Jacobi and Ruff, therefore, in accordance with said stipulation, and on motion of the proctor of said intervening libelants,

It is ordered, sentenced, and decreed that the said intervenor Fred M. Lyons do have and recover herein the sum of eight hundred dollars (\$800.00), and that the said intervenor Walter M. Cary do have and recover herein a like sum of eight hundred dollars, and that the intervenor Edward J. Knight do have and recover herein a like sum of eight hundred dollars (\$800.00), together with their costs and disbursements herein, taxed at the sum of———dollars, and that the said steamship "Eugene," her tackle, apparel, and furniture, be, and the same hereby are, condemned to the payment of the said sums.

And it is further ordered that the claim of the intervening libelant C. Hennigar be reserved for such judgment or orders as the Court deems just, upon such further hearing as may be had upon the issues therein.

And it is further ordered, adjudged, and decreed that the said steanship "Eugene," her tackle, apparel, and furniture, be, by the marshal of this district, exposed for sale and sold at public vendue, to the highest and best bidder for cash, after due notice as provided by law and the rules and practice of this court, and that the said marshal pay the proceeds arising from such sale, after deducting the costs and expenses thereof, into the registry of this court, there to await the further order of the Court in the premises as to the distribution of the same.

And to that end it is ordered and decreed that the clerk of this court issue a decree of venditioni exponas to the said marshal, returnable as required by the rules and practice of this court, and that the said marshal execute the same and make return thereof with all convenient speed.

Dated Dec. 7th, 1897.

(Claimant Joel P. Geer excepts, and his exception is allowed.)

C. H. HANFORD, Judge.

Service of a copy hereof received this Dec. 6, 1897.

STRUDWICK & PETERS,  
Attys. for Joel P. Geer, Claimant.

[Endorsed]: Judgment and Decree. Filed Dec. 7, 1897.  
In the United States District Court. R. M. Hopkins,  
Clerk. By H. M. Walthew, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

IN ADMIRALTY.

THE STEAMBOAT "EUGENE," Her

Tackle, Apparel, and Furniture,

GASTON JACOBI and CHARLES

RUFF,

Libelants and Respondents.

JOEL P. GEER,

Claimant and Appellant.

FRED M. LYONS, WALTER M.

CARY, and EDWARD J. KNIGHT,

Named in said Final Decree as Inter-  
venors.

**Petition for Appeal, and Assignment of Errors.**

Joel P. Geer, claimant herein, hereby appeals (and files his assignment of errors) from the decree entered in the above-entitled court in the above-entitled cause on December 7th, 1897, and from the whole thereof, to the next regular term of the United States Circuit Court of Appeals for the Ninth Circuit; and respectfully shows to the Court and alleges as follows:

That on the 18th day of September, 1897, or thereabouts, the libelants Gaston Jacobi and Charles Ruff filed their joint and several libel in the above-entitled

court in the above-entitled cause, wherein they alleged substantially as follows:

That the steamboat "Eugene" was, at the time of the filing of said libel, lying in port in the city of Seattle, Washington, bound on a voyage, via the port of St. Michaels, Territory of Alaska, to Dawson City, Northwest Territory, Dominion of Canada; and that at the times mentioned in said libel the steamship "Eugene" was owned and operated by the Portland and Alaska Trading and Transportation Company, a corporation organized under the laws of the State of Oregon, and that during said time said company was the owner of and engaged in running and operating a certain other steamship named the "Bristol," plying between Seattle, Washington, and St. Michaels, Alaska; that during all of said times one E. B. McFarland was the general manager, and one F. C. Davidge & Co. was the agent of said steamship "Eugene" and "Bristol," and of said Portland and Alaska Trading and Transportation Company, and as such were authorized and empowered, on behalf of said steamship "Eugene" and of said company, to enter into any and all contracts for the transportation or conveyance of passengers, baggage, or freight from Seattle, Washington, to Dawson City, via said port of St. Michaels; and that on or about the 19th day of August, 1897, by and through said E. B. McFarland and said F. C. Davidge & Co., the libelant Gaston Jacobi engaged passage for himself, to be conveyed with three-fourths of a ton of baggage from Seattle, Washington, to Dawson City, and purchased of said manager and agents

aforesaid two tickets for said passage, one of said tickets being for the conveyance of himself and baggage by said steamship "Bristol" from Seattle, Washington, to said port of St. Michaels, Alaska, and the other of said tickets being for the conveyance of himself and baggage from said port of St. Michaels, Alaska, to said Dawson City Northwest Territory, of the last named of which said tickets the following was a copy:

"No. 6. Portland and Alaska Trading and Transportation Company.

Good for one passage from St. Michaels, Alaska, to Dawson City, N. W. T., via S. S. 'Eugene.' Name, Gaston Jacobi.

(Signed) E. B. McFARLAND, General Manager."

For which said libelant paid for the first of said tickets—from Seattle to St. Michaels—the sum of one hundred dollars, and for said second named ticket from St. Michaels to Dawson City the sum of two hundred dollars, and that libelant expended in the purchase of baggage, consisting of a miner's outfit, the sum of \$200.00, and that at the time of the purchase of said tickets, the said steamship "Eugene" and said respondent company caused it to be advertised publicly, and undertook and agreed with libelant that said steamship "Eugene" would sail from the port of St. Michaels for said Dawson City, on the 24th day of August, 1897, or thereabouts, and would carry libelant over said route; and that said steamship "Eugene" wholly failed and neglected to keep said contract, although libelant was at all times ready



and willing to comply with said contract, and did comply therewith, and that by reason of the failure of said steamship "Eugene" to comply with said agreement libelant lost the amount paid by him for said tickets and said outfit, and was subjected to further delay to his damage in the sum of \$1,000.00.

And the claim of the said libelant Charles Ruff was substantially as the one just aforesaid, save that it alleged that the purchase of the ticket was on August 10th, 1897.

To said libel claimant Joel P. Geer excepted, in so far as the same sought to establish a lien upon said steamship "Eugene," which said exceptions were allowed by the Court, with leave granted libelants to amend; and on the 22d day of October, 1897, or thereabouts, said libelants filed an amended libel, which substantially alleges as follows:

That the "Eugene" was in the waters of Puget sound at the time of the filing of said amended libel, and at all times therein mentioned was owned and operated by the Portland and Alaska Trading and Transportation Company, which was engaged in the carriage of passengers, baggage, and freight between Seattle, Washington, and Dawson City, N. W. T.; and during said times one E. B. McFarland was the general manager and one C. W. Gould was the agent of said steamship "Eugene," and said company duly authorized and empowered to enter into any and all contracts on behalf of said steamship "Eugene" and of said company for the transportation of passengers, baggage, and freight from Seattle, Washing-

ton, to Dawson City, N. W. T., and that during all of said times said Portland and Alaska Trading and Transportation Company operated a certain other steamship known as the "Bristol" in connection with its said business as a common carrier between the points aforesaid; and that on or about the 11th day of August, 1897, the said steamship "Eugene," through her owners, manager, and agent, caused it to be publicly and extensively advertised that the said steamship "Eugene," in tow of the said steamship "Bristol," would leave Seattle, Washington, on or about the 23d day of August, 1897, for Dawson City, N. W. T., and would transport and carry passengers, baggage, and freight, up to a certain number and limit, and would reach said Dawson City not later than September 15th, 1897, and that relying on the faith of said advertisement, and believing the representations therein to be true, said libellant Gaston Jacobi, on or about the 19th day of August, 1897, entered into a contract with said steamship "Eugene," wherein and whereby the said steamship "Eugene" undertook, promised, and agreed to carry said libellant from said city of Seattle, Washington, to Dawson City, N. W. T., via St. Michaels, Alaska, and would leave Seattle, Washington, on said voyage on the 24th day of August, 1897, and would reach Dawson City not later than September 15th, 1897; and that it was agreed that said "Eugene" would leave Seattle on said voyage in tow of said steamship "Bristol," and would be towed by said steamship "Bristol" from Seattle to said port of St. Michaels, from which place said steamship "Eugene" would proceed on said voyage alone up the

Yukon river to said Dawson City, and would reach there on September 15th, and that in consideration of said promise and agrtements libelant engaged passage on said steamship from Seattle, Washington, to said Dawson City, and paid therefor the passage money, amounting to the sum of \$300.00, for the conveyance of himself and 1,500 pounds of baggage, and received tickets for said passage; that libelant performed all the terms and conditions of said contract, and that on or about the 24th day of August, 1897, said steamship "Eugene" entered upon the performance of said contract, and left said city of Seattle in tow of said steamship "Bristol," and undertook to carry libelant and other passengers over the whole of said voyage, and proceeded on the high seas for a distance of upwards of six hundred or seven hundred miles, up to the coast of Alaska, when said steamship "Eugene" abandoned said voyage and refused to proceed further thereon, and libelant was landed at the city of Victoria B. C., and that said steamship "Eugene" wholly failed and neglected to keep said contract on her part, and that libelant, on the faith of said representations and agreements, purchased an outfit at an expense of \$200.00, which was rendered valueless, and that he lost a large amount of time, all to his damage in the sum of \$1,000.00; and the claim of said libelant Charles Ruff was to the same effect, and he claimed the same damages.

That thereafter, and on the day of November, 1897, Joel P. Geer, claimant of said steamship "Eugene," filed an answer to said amended libel, and substantially alleged as follows:

He denied that said steamship "Eugene" at the times mentioned in said libel was owned by said Portland and Alaska Trading and Transportation Company, or that it was operated by said company in any manner save as set up in said answer; he denied that any or all of the persons named in said libel were authorized to enter into any contract, on behalf of said steamship "Eugene" or of said company, for the transportation of passengers, baggage, or freight from said city of Seattle, Washington, to said Dawson City, N. W. T.; and denied that any advertisements were made by said "Eugene," its manager or agents, to the effect that said steamship "Eugene," in tow of steamship "Bristol," would leave Seattle Washington, for Dawson City, N. W. T., on 23d day of August, 1897, as alleged in said amended libel; and denied that on or about the 19th day of August 1897, or at any time, the libellant Gaston Jacobi made or entered in to a contract with said steamship "Eugene," wherein or whereby said steamship "Eugene" promised, undertook, or agreed to carry libellant from said city of Seattle, Washington, to said Dawson City, N. W. T., via the port of St. Michaels, or that it was agreed that said vessel would leave Seattle, Washington, on the 24th day of August, 1897, or at any other date or time, or that she would reach said Dawson City not later than September 15th, 1897; or that said steamship "Eugene" would leave said city of Seattle, Washington, in tow of said steamship "Bristol," or would be towed by the said "Bristol" from Seattle to said port of St. Michaels, Alaska, or that she agreed to continue said voy-

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age up the Yukon river to Dawson City, or that she would reach there on September 15th, as aforesaid, or that in consideration of said alleged promises or any promises libelant engaged passage on said steamship "Eugene" from Seattle, Washington, to said Dawson City, or paid therefor passage money amounting to \$300.00, or any sum whatever, for the conveyance of himself his baggage, or freight, or that he received tickets therefor, or that he ever engaged passage on said steamship "Eugene" from Seattle, Washington, to Dawson City, N. W. T., at all; and claimant in said answer further denied there was any contract whatever as in said libel alleged, or that on or about August 24, 1897, or at any other time, said "Eugene" entered upon the performance of said alleged contract, or that she left Seattle in tow of said steamship "Bristol," or that she undertook to carry libelant or other passengers over the whole of said voyage, or any part thereof, or proceeded upon said alleged voyage for the distance of upwards of six hundred or seven hundred miles, or any distance, up to the coast of Alaska, or that she abandoned said voyage or refused to proceed further thereon, or that any such alleged contract existed between said steamship "Eugene" and libelant, or that she failed or neglected to keep the same.

And claimant further denied that on the faith of said alleged representations or agreements libelant underwent any expense in the procuring of an outfit, or that he was entitled to recover for any alleged expenses or for any loss of time, by reason of said alleged breach, for the

reason that the same were too remote and speculative, and furnish no basis for a recovery.

And further answering the libel of said Gaston Jacobi claimant alleged:

That prior to the 31st day of July, 1897, Francis B. Jones and Joel P. Geer, being part owners of the steamship "Eugene," then belonging to the port of Portland, State and District of Oregon, entered into a contract and agreement with the Portland and Alaska Trading and Transportation Company, in words as follows, to-wit:

This agreement, made this 31st day of July, 1897, by and between Francis B. Jones and Joel P. Geer, of the city of Portland, Multnomah Co., Oregon, and the Portland and Alaska Trading and Transportation Company of the same place, witnesseth:

That whereas, the said Francis B. Jones and Joel P. Geer are desirous of placing the steamer "Eugene," now plying as a passenger boat upon the Willamette river, upon the Yukon river, in the territory of Alaska and the Northwest Territory of Great Britain, adjoining thereto, for the purpose of running the said boat upon the said river;

And whereas, the Portland and Alaska Trading and Transportation Company are desirous of using the said boat for the purpose of transporting freight up the Yukon river to Circle City or Dawson;

Now, therefore, in consideration of the premises, and the further consideration of one dollar in hand paid the said Francis B. Jones and Joel P. Geer, have, and do here by agree to and with the said Portland and Alaska Trad-

ing and Transportation Company to turn over the possession of the said steamer "Eugene" to the said Portland and Alaska Trading and Transportation Company for the purposes aforesaid, of taking the same to and up the Yukon river to such point of the same as the said Portland and Alaska Trading and Transportation Company may desire, and when the said steamer "Eugene" has arrived at the terminal point decided upon by the Portland and Alaska Trading and Transportation Co., upon the river Yukon and hath discharged here cargo within a reasonable time and under existing conditions, the said Portland and Alaska Trading and Transportation Company shall turn over the said steamer to the Willamette and Columbia River Towing Company and Joel P. Geer, and to there enter a joint traffic interchange between Portland, Oregon, and Dawson City, Alaska, for ensuing year, on a basis of 40 per cent to the steamer "Eugene" and 60 per cent to the Portland and Alaska Trading and Transportation Company of through rates, details of which to be entered into before sailing from Portland, without charge, cost, or expense to them. But it is expressly understood that the said Portland and Alaska Trading and Transportation Company do not hereby agree to transfer said steamer safely to the said Yukon, but only to make the endeavor so to do, using all proper precaution and care in said effort. But if the said steamer "Eugene" shall fail to reach the Yukon river or said point of destination by reason of any infirmity in the character of the steamer, but without negligence upon the part of the agents of the said Portland and

Alaska Trading and Transportation Company, the latter shall not be responsible in any way for the loss of the said steamer or its failure to arrive at the proposed terminal destination.

And the said Portland and Alaska Trading and Transportation Company in consideration of the premises, and that the said Francis B. Jones and Joel P. Geer have put the said steamer "Eugene" into their possession for the aforesaid purposes, hath and do hereby agree to put the said boat at their own proper cost, charge, and expense into such condition as will render it, as far as practicable, seaworthy and safe to proceed upon the high seas to the said Yukon river. The said repairs and renewals necessary to be made to and upon the said steamer "Eugene" to be done at once, and to be satisfactory to the said Francis B. Jones and Joel P. Geer before the said steamer leaves the city of Portland.

In testimony whereof, the said Francis B. Jones and Joel P. Geer, and the Portland and Alaska Trading and Transportation Company, by its president, have hereunto set their hands and seals, and the seal of the said company.

F. B. JONES.

JOEL P. GEER.

H. P. McGUIRE, For the Portland and Alaska Trading and Transportation Co.

That thereafter, and on the 7th day of August, 1897, the Willamette and Columbia River Towing Company and said Joel P. Geer, the then owner of said steamship



“Eugene,” then lying in the port of Portland, Oregon, and Portland and Alaska Trading and Transportation Company, entered into a contract relative to said steamship “Eugene,” in words as follows, to-wit:

This agreement, made this 7th day of August, 1897, by and between Willamette and Columbia River Towing Company, a corporation, and Joel P. Geer, of the city of Portland, Oregon, and the Portland and Alaska Trading and Transportation Company of the same place, witnesseth:

That whereas, the said Willamette and Columbia River Towing Company and Joel P. Geer are desirous of placing the steamer “Eugene,” now plying as a passenger boat upon the Willamette river, upon the Yukon river, in the Territory of Alaska, and the Northwest Territory of Great Britain, adjoining there to, for the purpose of running the said boat upon the said river;

And whereas, the Portland and Alaska Trading and Transportation Company are desirous of using the said boat for the purpose of transporting freight up the Yukon river to Circle City or Dawson City, Northwest Territory:

Now, therefore, in consideration of the premises, and of the repairs, improvements, and money expended by the Portland and Alaska Trading and Transportation Company upon said steamer “Eugene” in preparing the said steamer for the sea voyage from Portland to St. Michaels, Alaska, and the further consideration of one dollar in hand paid, the said Willamette and Columbia River Towing Company and Joel P. Geer, have, and do

hereby agree to and with the said Portland and Alaska Trading and Transportation Company to turn over, and do hereby, turn over, the possession of the said steamer "Eugene" to the said Portland and Alaska Trading and Transportation Company for the purposes aforesaid, of taking the same to and up the Yukon river to such point of the same as the said Portland and Alaska Trading and Transportation Company may desire, and when the said steamer "Eugene" has arrived at the terminal point decided upon by the said Portland and Alaska Trading and Transportation Company, upon said river Yukon, and hath discharged her cargo, the said Portland and Alaska Trading and Transportation Company shall turn over to the said Willamette and Columbia River Towing Company and Joel P. Geer, without expense to them so far as transporting said steamer "Eugene" to said Dawson City, Alaska. But it is expressly understood that the said Portland and Alaska Trading and Transportation Company do not hereby agree to transfer said steamer safely to the said Yukon, but only to make the endeavor so to do, using all proper precaution and care in said effort. But if the said steamer "Eugene" shall fail to reach the Yukon river or said point of destination by reason of any infirmity in the character of the steamer, but without negligence upon the part of the agents of the said Portland and Alaska Trading and Transportation Company, the latter shall not be responsible in any way for the loss of the said steamer or its failure to arrive at the proposed terminal destination.

And the said Portland and Alaska Trading and Trans-

portation Company, in consideration of the premises, and that the said Willamette and Columbia River Towing Company and Joel P. Geer have put the said steamer "Eugene" into their possession for the aforesaid purposes, hath and do hereby agree to put the said boat, at their own proper cost, charge, and expense, into such condition as will render it, as far as practicable, seaworthy and safe to proceed upon the high seas to the said Yukon river. In consideration of the money expended by the said Portland and Alaska Trading and Transportation Company in the preparation, repairing, and improvement of the said steamer "Eugene" at the city of Portland, Oregon, so as to make her seaworthy, the Willamette and Columbia River Towing Company and Joel P. Geer hereby enter into an agreement with and hereby bind themselves to give the passengers and freight offered them by the said Portland and Alaska Trading and Transportation Company at St. Michaels, or any other point agreed upon by them at or near the mouth of the said Yukon river, the preference of all other passengers and freight, and hereby enter into a joint traffic agreement for the term of one year from the time said steamer "Eugene" reaches Dawson City, with the Portland and Alaska Trading and Transportation Company, for the interchange of passengers and freight between Portland, Oregon, and Dawson City, Northwest Territory, and other points upon the Yukon river reached by said steamer "Eugene," upon the basis of forty (40) per cent of the gross receipts received from all interchangeable passengers and freight to Willamette and

Columbia River Towing Co. and Joel P. Geer, and sixty (60) per cent of said gross receipts to the Portland and Alaska Trading and Transportation Company. The feeding and revenue derived from the passengers and the expense of providing for them upon said steamer "Eugene" is not to be included herein.

In testimony whereof, the said Willamette and Columbia River Towing Company and Joel P. Geer, and the Portland and Alaska Trading and Transportation Company, by its President, have hereunto set their hands and seals, and the seal of the said company.

WILLAMETTE & COLUMBIA R. T. CO. [Seal]  
 By F. B. JONES, [Seal]  
 President.

In the presence of:

Alex Sweek.  
 E. B. McFarland.

WILLAMETTE & COLUMBIA RIVER TOW-  
 ING COMPANY.

[Seal of Portland and Alaska  
 Trading and Transporta-  
 tion Company.]

By JOEL P. GEER. [Seal]  
 M. S. JONES, Secretary.

PORTLAND & ALASKA TRADING AND TRANS-  
 PORTATION COMPANY.

[Seal of Willamette and Co-  
 lumbia River Towing Co.]

By W. W. McGUIRE, Sec.

That in pursuance of said contracts, and in conformity therewith, said owners of said steamship "Eugene" turned the possession of her over unto the said Portland and Alaska Trading and Transportation Company for the purposes, thereof, and not otherwise, and said Portland

and Alaska Trading and Transportation Company proceeded to refit said steamer "Eugene" in accordance with the provisions of said contracts; and claimant averred that the said "Eugene" was not an ocean going vessel, but a light draught river steamboat, then plying upon the waters of the Willamette River in the State of Oregon, and was well known as such both in the community at Portland and Seattle, and that her use upon the seas or any use as carrier of freight, passengers, or baggage was never contemplated between her owners and the said Portland and Alaska Trading and Transportation Company, and that the delivery of said steamboat "Eugene" by her said owners to said Portland and Alaska Trading and Transportation Company of Portland, Oregon, was in accordance with said contracts, and not otherwise, and for the purpose of fitting up said vessel and bringing the same from Portland, Oregon, to St. Michaels, Alaska, between which said latter point and Dawson City the owners of the "Eugene" and said Portland and Alaska Trading and Transportation Company desired and agreed to operate said boat. That thereafter and before the departure of said boat from Portland, Oregon, the Yukon Transportation Company, of Portland, Oregon, a corporation organized and existing under the laws of the State of Oregon, by purchases from said Willamette and Columbia River Towing Company and said Joel P. Geer became owner of steamship "Eugene," and is the owner thereof, and claimant was master and bailee thereof on behalf of said owner.

That thereafter said steamboat "Eugene," by her own

power, proceeded from Portland to Astoria in the State of Oregon, and from said latter point was towed by the tugboat "Escort" to Port Angeles, in the State of Washington, and from said last-named point proceeded with her own power to Comox, British Columbia, and at or about said last-named point was taken in tow by the steamship "Bristol," such towage being for the purposes mentioned in the said contract of July 31st, 1897, and of August 7th, 1897, not otherwise; and when said steamboat "Eugene" had proceeded, as aforesaid, a distance of six hundred or seven hundred miles from Comox, British Columbia, heavy weather was encountered, and said steamboat "Eugene" began to strain heavily and spring leaks, and was compelled to, and did, return to Port Townsend in the State of Washington, and thence proceeded to Seattle, Washington, for repairs at which said latter point she was lying at the time of her attachment at the instance of libelants, and claimant alleged that the libelant Gaston Jacobi purchased from F. C. Davidge & Co., at Seattle, Washington, passage upon the steamship "Bristol" from Victoria, B. C., to St. Michaels, Alaska, then operated by F. C. Davidge & Co. under time charter, and thereafter embarked upon said steamship "Bristol," to gether with his freight and baggage, and at the same time purchased from the Portland and Alaska Trading and Transportation Company a ticket from St. Michaels, Alaska, to Dawson City, N. W. T., which this claimant is informed and believes, and therefore so alleges, read as follows:

No. 6. Portland and Alaska Trading and Transportation Co.

Good for one passage from St. Michaels to Dawson City, N. W. T., via S. S. "Eugene." Name Gaston Jacobi.

E. B. McFARLAND, Manager.

And claimant alleged that neither libelant Jacobi nor his baggage or freight were ever on board the steamer "Eugene," and that the voyage of said vessel contemplated under said contract evidenced by said ticket was to begin at St. Michaels, Alaska, and end at Dawson City, N. W. T.; and that neither said libelant nor said steamboat "Eugene" ever arrived at St. Michaels, and that said contract was wholly executory.

And claimant averred that by reason of the fact that the steamboat "Eugene" was not a seagoing vessel, and was commonly and generally known as such, neither said Portland and Alaska Trading and Transportation Company nor the owners of said steamboat "Eugene," nor claimant, ever promised or agreed that said vessel could in fact undergo the trip to St. Michaels, and there place herself in readiness to proceed up the Yukon river, and from St. Michaels to Dawson City and claimant alleges that no absolute representations or warranty that she would arrive at St. Michaels on or before September 15, 1897, or at any other time, were made by said Portland and Alaska Trading and Transportation Company to libelant, but only that an attempt would be made to bring her to said point; and claimant averred

that said attempt was so made, and by stress of weather said boat was unable to proceed to St. Michaels, and was obliged to abandon the attempt and return to Port Townsend.

And claimant further averred that libelant, prior to the institution of this suit, released said steamer "Bristol" and said F. C. Davidge & Co. from his contract with them and said steamship for the conveyance of himself from Victoria to St. Michaels, and that the conveyance of libelant contemplated under said ticket on the steamboat "Eugene" was from St. Michaels, Alaska, to Dawson City, and not otherwise; and that neither the said libelant nor said steamer "Eugene" ever arrived at the port of St. Michaels, at which said point said voyage was to commence; and claimant further averred that no part of the passage money alleged as paid was ever paid to or received by the Yukon Transportation Company of Portland, Oregon, owner of the "Eugene," or this claimant as her manager.

And the answer and separate defense of claimant to the claim of said libelant Charles Ruff was in substance the same as the portion of said answer relating to said libel of Gaston Jacobi herein before set forth. To said answer libelants Jacobi and Ruff filed a replication.

Thereafter testimony was taken and proofs were adduced upon the issues this joined, and said cause was argued upon the said amended libel of said Gaston Jacobi and Charles Ruff, and upon the answer of claimant Joel P. Geer thereto, and upon the testimony and proofs adduced the Court, on December 7th, 1897, made and enter-



ed its final decree in said cause, wherein and whereby said Court adjudged and decreed as follows:

*In the District Court of the United States for the District of Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants

vs.

THE STEAMSHIP "EUGENE,"

Respondent.

JOEL P. GEER, Claimant, and  
FRED M. LYONS, WALTER M.  
CARY, and EDWARD J. KNIGHT,

Intervenors.

**Final Decree.**

The monition and attachment issued in the above-entitled cause having been heretofore duly returned and the default of all persons, except the above-named claimant and intervenors having been duly entered herein and this cause coming regularly to be heard upon the pleadings and proofs of the respective parties herein, and argued by the proctors of the respective parties, and after due deliberation being had in the premises the Court finds that all of the material allegations of libel are true, that the libelants are entitled to recover herein, and the Court having assessed the amount of said libelants' re-

covery at the sum of eight hundred dollars (\$800.00) for each of the libelants, and it appearing to the Court that the said steamer "Eugene" is liable in specie for the payment of said amount to each of the libelants, therefore, on motion of proctor for libelants.

It is hereby ordered, sentenced, and decreed that the said steamship "Eugene," her tackle, apparel, and furniture, be, and the same hereby are, condemned for the payment of the aforesaid amounts to-wit, for the payment of the sum of eight hundred dollars to libelant Gaston Jacobi and for the further sum of eight hundred dollars to the libelant Charles Ruff, together with the costs and disbursements of this action, taxed at the sum of \_\_\_\_\_ dollars.

And a stipulation having been duly entered into and filed in this cause by the respective parties, wherein it is stipulated and agreed that the intervenors Fred M. Lyons, Walter M. Cary, and Edward J. Knight shall abide the result of the trial of the issues between libelants and claimant herein, and shall be entitled to the same recovery upon their intervening libels herein as might be recovered by the principal libelants Jacobi and Ruff, therefore, in accordance with said stipulation and on motion of the proctor of said intervening libelants

It is ordered, sentenced, and decreed that the said intervenor Fred M. Lyons do have and recover herein the sum of eight hundred dollars (\$800.00), and that the said intervenor Walter M. Cary do have and recover herein a like sum of eight hundred dollars, and that the interve-

nor Edward J. Knight do have and recover herein a like sum of eight hundred dollars (\$800.00), together with their costs and disbursements herein taxed at the sum of \_\_\_\_\_ dollars, and that the said steamship "Eugene," her tackle, apparel, and furniture, be, and the same hereby are, condemned to the payment of the said sums.

And it is further ordered that the claim of the intervening libelant \_\_\_\_\_ be reserved for such judgment or orders as the Court deems just, upon such further hearing as may be had upon the issues therein.

And it is further ordered, adjudged, and decreed that the said steamship "Eugene," her tackle, apparel, and furniture, be, by the marshal of this district, exposed for sale and sold at public vendue, to the highest and best bidder for cash, after due notice as provided by law and the rules and practice of this court, and that the said marshal pay the proceeds arising from such sale, after deducting the costs and expenses thereof, into the registry of this court, there to await the further order of the Court in the premises as to the distribution of the same.

And to that end it is ordered and decreed that the clerk of this court issue a decree of venditioni exponas to the said marshal, returnable as required by rules and practice of this court, and that said marshal execute the same and make return thereof with all convenient speed.

Dated Dec. 7th, 1897.

(Claimant Joel P. Geer excepts, and his exception is allowed.)

C. H. HANFORD, Judge."

No intervening libel was at the time of the rendition of said final decree or at any time prior thereto, filed by Walter M. Cary, Edward J. Knight, or Fred M. Lyons, named as intervenors in said final decree, nor was any stipulation for costs filed by said persons so named as intervenors.

That on said appeal said claimant and appellant shall seek a new decision on the facts, and shall introduce other and different testimony which was not available at the time of the trial in the District Court, and was not known to appellant and could not with reasonable diligence have been discovered before that time.

That the special facts which appellant shall seek to have reformed, and upon which proofs shall be adduced, are as follows:

That during the times mentioned in said libel and amended libel the "Eugene" was owned by the Portland and Alaska Trading and Transportation Company, and was engaged as a common carrier of passengers, baggage, and freight between Seattle, Washington, and Dawson City N. W. T., and that E. B. McFarland was general manager of said vessel and C. W. Gould, agent of said vessel; that either of said persons was authorized and empowered to enter into any or all contracts on behalf of said vessel, for the transportation of passengers, baggage, or freight from Seattle, Washington, to Dawson City, N. W. T., that said vessel caused it to be advertised that, in tow of the steamship "Bristol," she would leave Seattle for Dawson City on August 23, 1897, and

would carry passengers and baggage, and would reach Dawson City not later than September 15, 1897.

That on the faith of any such representations or advertisements, or on the faith or credit of said vessel, libelants Gaston Jacobi and Charles Ruff, or either of them, or any other person, entered into a contract with the steamship "Eugene" at any time, wherein and whereby said steamboat "Eugene" undertook promised, or agreed to carry libelants, or any person, from Seattle, Washington, to Dawson City, N. W. T. or that she agreed to leave Seattle, Washington, on said voyage on August 24th, 1897, or at any time, or reach Dawson City on September 15, 1897, or that it was understood and agreed that the "Eugene," in tow of the steamship "Bristol," would leave Seattle, and would be towed from there to the port of St. Michaels, Alaska, or would continue said voyage alone up the Yukon river from said latter port, or that libelants or any other person engaged passage on the steamer "Eugene" from Seattle, Washington, to Dawson City, or paid passage money therefor.

That on August 24, 1897, the "Eugene" entered upon the performance of said contract, and left Seattle in tow of the "Bristol," and undertook to carry libelants or other passengers over the whole of said voyage, and proceeded on the high seas for 600 or 700 miles on said voyage, and there refused to proceed further, and neglected to keep said contract.

That on the faith of said representations and agreements on the part of the "Eugene," libelants went to any

expense, and lost a large amount of time, or that libelants, or either of them, or any other persons, were hindered in carrying on their business or in doing work to their damage in any sum whatever recoverable from said vessel.

The foregoing being in substance the allegations of the amended libel.

The said Court in said decree having failed to make any special findings and finding that all of the material allegations of the libel are true, it will be maintained upon said appeal that the Court erred as follows:

1. In finding that libelants Gaston Jacobi and Charles Ruff, or either of them, are entitled to recover of and from the steamboat "Eugene" any damages whatever by reason of the matters alleged in said libel and amended libel, or upon the proofs adduced in said case.

2. In holding that said libelants, or either of them, had contracted with said steamboat "Eugene" for a continuous voyage from Seattle, Washington, to Dawson City.

3. That the steamboat "Eugene" had entered upon the performance of said alleged voyage.

4. That an action in rem lay against the "Eugene" at the suit of libelants, or either of them, by reason of any of the matters or things disclosed by the pleadings or proofs.

5. In not holding that the "Eugene" was a vessel operated by the Portland and Alaska Trading and Transportation Company (the person with whom and on the credit of whom libelants contracted), under an agree-

ment in the nature of a charter, which authorized and permitted said Portland and Alaska Trading and Transportation Company to use said vessel, or to contract for the carriage of passengers and freight on said vessel, only on the waters of the Yukon river, from St. Michaels to Dawson City, and that the possession of said boat by said Portland and Alaska Trading and Transportation Company was only for such purpose, and that said Portland and Alaska Trading and Transportation Company had no authority or right to pledge said vessel for the performance of any contract in relation to the carriage of passengers, baggage, or freight, except for a voyage up the Yukon river from St. Michaels to Dawson City, in the event of the safe arrival of said vessel at the port of St. Michaels, Alaska.

6. In not holding that any contract on behalf of the "Eugene" was wholly executory.

7. In allowing libelants Jacobi and Ruff each the sum of \$800.00 damages; for the reason that the same was excessive and unwarranted, and unjustified by the evidence, in that \$400.00 of the amount of said decree in favor of each of said libelants is in the nature of damages for loss of time or expected profits, and as such is too remote, speculative, and contingent, and cannot be recovered from anyone, and that there is no evidence whatever to support the same.

8. In not holding that the steamboat "Eugene" was compelled to put back to Victoria by reason of the perils of the sea and that said vessel under such circumstances,

would in any event be thereby discharged from any obligation or liability to libelants.

9. In not holding that the contract of libelants, and each of them, with said Portland and Alaska Trading and Transportation Company, in so far as the steamboat "Eugene" was concerned, was an executory contract, the performance of which had not been entered upon by the "Eugene."

10. In not holding that the said contract was made by libelants, and each of them, upon the faith of the personal credit and responsibility of said Portland and Alaska Trading and Transportation Company, and its managers and stockholders, and not upon the faith or credit of said steamboat "Eugene."

11. In entering a decree in favor of Fred M. Lyons, Walter M. Cary, and Edward J. Knight, or either or any of them, in the sum of \$800.00, or any sum whatever, by reason of each, all, and singular the errors hereinbefore alleged as to the decree in favor of libelants Jacobi and Ruff. And also

12. That the Court was without jurisdiction to entertain the suits of said Fred M. Lyons, Walter M. Cary, and Edward J. Knight, or either of them, or to enter any decree whatever thereon.

13. In decreeing that any stipulation filed in this cause authorizes the rendition of any decree whatever in favor of said alleged intervenors, or any of them, or the recovery of the sum of \$800.00, or any other sum, by either or any of said intervenors.



Wherefore, appellant prays that this his appeal and assignment of errors be allowed, and that citation issue according to due process of law.

STRUDWICK & PETERS,

WILLIAMS, WOOD & LINTHICUM,

Proctors for Appellant.

State of Washington, )  
County of King.        ) ss.

W. A. Peters, being first duly sworn, on oath deposes and says that he is a citizen of the State of Washington and above the age of twenty-one years; that on the 17th day of December, 1897, between the hours of nine o'clock in the morning and four o'clock in the afternoon, he served the attached assignment of errors and prayer for appeal on Gaston Jacobi and Charles Ruff, respondents, by leaving a copy of the same at the office of John C. Hogan, their proctor of record, with one J. W. Spriggs, in said office and located therein, for the said John C. Hogan; affiant, after diligent inquiry, being unable to find the said John C. Hogan in person, or either of the respondents Ruff or Jacobi.

Affiant further says that the said J. W. Spriggs was over the age of twenty-one years, and a competent person to accept said service.

W. A. PETERS.

Subscribed and sworn to before me this 17th day of December, 1897.

[Seal ]

G. F. FAY,

Notary Public in and for the State of Washington, residing at Seattle.

Recd. copy this Dec. 17, 1897.

PATTERSON & EASLY,

Proctors for Libelants.

[Endorsed]: Petition for appeal and assignment of errors. Filed Dec. 17, 1897. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

*In the District Court of the United States, for the District of  
Washington, Northern Division.*

THE STEAMBOAT "EUGENE," Her  
Tackle, Apparel, etc.

GASTON JACOBI and CHARLES  
RUFF,

Libelants.

JOEL P. GEER,

Claimant.

FRED M. LYONS, WALTER M.  
CARY, and EDWARD J. KNIGHT,  
Named in said Decree as Interven-  
ors.

### **Notice of Appeal.**

To Gaston Jacobi and Charles Ruff, libelants, and to John C. Hogan and Patterson and Easley, their proctors, and to Fred M. Lyons, Walter M. Cary, and Edward J. Knight, who are named in the decree hereinafter referred to as intervenors, and to Patterson and Easley, whom claimant is advised and believes represents said alleged intervenors as proctors, and to R. M. Hopkins, clerk of above-entitled court, please take notice:

That Joel P. Geer, claimant of the steamboat "Eugene," hereby appeals from the decree made and entered by the above-entitled court in the above-entitled cause on the 7th day of December, 1897, and from the whole of

said decree, to the next regular term of the United States Circuit Court of Appeals for the Ninth Circuit, and that appellant has regularly and duly filed his appeal herein, which has been allowed in open court.

STRUDWICK & PETERS,  
WILLIAMS, WOOD & LINTHICUM,  
Proctors for Joel P. Geer, Claimant and Appellant.

Due service of the within notice of appeal by certified copy, as prescribed by law, is hereby admitted, at Seattle, Washington, Dec. 17, 1897.

R. M. HOPKINS,  
Clerk U. S. District Court.

Dues service of the within notice of appeal, by certified copy, as prescribed by law, is hereby admitted at Seattle, Washington, Dec. 17th, 1897.

J. C. HOGAN, and  
PATTERSON & EASLY,  
Proctors for Libelants and Intervenors.

[Endorsed]: Notice of Appeal. Filed Dec. 17, 1897.  
R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

*In the District Court of the United States for the District  
of Washington, Northern Division.*

THE STEAMBOAT "EUGENE," Her  
Tackle, Apparel, etc.

GASTON JACOBI and CHARLES  
RUFF,

Libelants.

JOEL P. GEER,

Claimant.

FRED M. LYONS, WALTER M.  
CARY, and EDWARD J. KNIGHT  
Named in said Decree as Interven-  
ors.

### **Notice of Appeal.**

To Gaston Jacobi and Charles Ruff, libelants, and to John C. Hogan and Patterson and Easley, their proctors, and to Fred M. Lyons, Walter M. Cary, and Edward J. Knight who are named in the decree hereinafter referred to as intervenors, and to Patterson and Easley, whom claimant is advised and believes represents said alleged intervenors as proctors, and to R. M. Hopkins, clerk of above-entitled court, please take notice:

That Joel P. Geer claimant of the steamboat "Eugene," hereby appeals from the decree made and entered by the above-entitled court in the above-entitled cause

on the seventh day of December, 1897, and from the whole said decree, to the next regular term of the United States Circuit Court of Appeals for the Ninth Circuit, and that appellant has regularly and duly filed his appeal herein, which has been allowed in open court.

STRUDWICK & PETERS,

WILLIAMS, WOOD & LINTHICUM,

Proctors for Joel P. Geer, Claimant and Appellant.

United States of America, {  
District of Washington. } ss.

I, J. C. Flanders, one of the proctors for the claimant and appellant in the above-entitled cause, do hereby certify that I have compared the foregoing copy of notice of appeal with the original thereof; and that the same is a full, true, and correct copy of such original, and of the whole thereof.

J. C. FLANDERS,

Of Proctors for Claimant and Appellant.

[Endorsed]: Notice of Appeal. Filed Dec. 17, 1897.  
R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

THE STEAMBOAT "EUGENE," Her

Tackle, Apparel, etc.,

GASTON JACOBI and CHARLES

RUFF,

Libelants,

JOEL P. GEER,

Claimant.

FRED M. LYONS, WALTER M. CARY,

and EDWARD J. KNIGHT, Named

in said Decree as Intervenors.

### **Order Allowing Appeal.**

Now, at this time, comes Joel P. Geer, claimant of the steamboat "Eugene," by Messrs. Strudwick and Peters and Williams, Wood & Linthicum, his proctors, and in open court presents to the Court his petition praying for an order allowing an appeal by him to the United States Circuit Court of Appeals for the 9th Circuit, from the final decree heretofore entered in this cause on December 7th, 1897, and also moves the Court for a stay of proceedings as to the sale of said vessel under said decree, and to fix the amount of the bond to be given by him on such appeal, including the stay of such proceedings.

Whereupon, it is ordered that the prayer of said petition be granted, and that said claimant be, and he is hereby, allowed to take the appeal prayed for therein, upon giving within ten days a supersedeas and cost bond on such appeal, with surety, to be approved by the Judge making this order, in the sum of \$2,500, said vessel pending the determination of said appeal to remain in the custody of the marshal of this District.

Dec. 17th, 1897.

C. H. HANFORD.

[Endorsed]: Allowance of appeal. Filed Dec. 17th, 1897. In the United States District Court. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.



*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants

vs.

THE STEAMSHIP "EUGENE" and  
Others.

### **Notice to Give Stipulation.**

To the above-named libelants, and to Messrs. John C. Hogan and to the Messrs. Patterson and Easley, their proctors; and to Fred M. Lyons, Walter M. Cary, and Edward J. Knight, who are named in the decree as intervenors, and to Messrs. Patterson and Easley, who claimant is advised and believes represents them as proctors:

You and each of you will please take notice that the appellant and claimant proposes as sureties on his appeal and stay bond Messrs. N. H. Latimer, and R. H. Denny, bankers of the city of Seattle, connected with the Dexter Horton Banking Com-

pany, and that at the courtroom of the above-entitled court, in the city of Seattle, on the 22nd day of December, present appellant will present to the Court for approval, and will give his stipulation on appeal and to supersede the decree herein entered.

WILLIAMS, WOOD & LINTHICUM,  
STRUDWICK & PETERS,

Proctors for Appellant.

We hereby accept service of a copy of the within notice this Dec. 18, 1897.

PATTERSON & EASLY, and  
JOHN C. HOGAN (By P. & E.),

Proctors for Libelants and Intervenors, Lyons, Cary,  
and Knight.

[Endorsed]: Notice to give stipulation. Filed Dec. 18, 1897. In the United States District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

*In the United States District Court, District of Washington,  
Northern Division.*

GUSTAVE JACOBI and CHARLES  
RUFF,

Libelants. } No. 1,128.

vs.

THE STEAMSHIP "EUGENE" et al.

### **Stipulation as to Intervening Libels.**

It is hereby agreed that the libel on account of repairs, herein originally filed, shall stand herein, as undetermined and a existing libel herein, and that the present owners of said claim for repairs shall, if they so desire, amend said libel and substitute for the original libelant the present owner of said claim for repairs.

Nov. 30, 1897.

JOHN C. HOGAN, and  
PATTERSON & EASLY,

Proctors for Libelants herein.

WILLIAMS, WOOD & LINTHICUM,  
For Owners of said Claim.

[Endorsed]: Stipulation. Filed this 20th day of Dec.,  
1897. R. M. Hopkins, Clerk.

*In the United States District Court, District of Washington  
Northern Division.*

GASTON JACOBI, et al.,

vs.

STEAMER "EUGENE."

Libelants, }

No. 1,128.

**Order Approving Bond on Appeal.**

This matter coming on now to be heard for approval for supersedeas and appeal bond, upon due notice of libelants and intervenors, they being present by counsel:

Now, upon reading and filing said bond, the same is allowed and approved.

Dec. 23d, 1897.

C. H. HANFORD,

Judge.

*In the United States District Court, District of Washington,  
Northern Division.*

THE STEAMBOAT "EUGENE," Her  
Tackle, Apparel, and Furniture.

GASTON JACOBI and CHARLES  
RUFF,

Libelants and Respondents.

JOEL P. GEER, Claimant.

Appellant.

### **Bond on Appeal.**

Know All Men by These Presents, that we, Joel P. Geer, as principal, and N. H. Latimer and R. H. Denny, as sureties, are held and firmly bound unto Gaston Jacobi and Charles Ruff, libelants, and to Fred M. Lyons, Walter M. Cary, and Edward J. Knight, who are named in the decree as intervenors, in the sum of twenty-five hundred (\$2,500) dollars, and to their and each of their successors, executors, or administrators, to which payment, well and truly to be made, we hereby bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 20th day of December, 1897.

The condition of this undertaking is such that, whereas, said Joel P. Geer has appealed to the United States Cir-

cuit Court of Appeals for the Ninth Circuit from the decree rendered in the above-entitled cause by the District Court of the United States, for the District of Washington, Northern Division, rendered and entered on the 7th day of December, 1897; and whereas, said steamboat "Eugene," her tackle, apparel, and furniture, is in the custody of the marshal of said District under admiralty process, and a writ of venditioni exponas has issued, or is about to issue, under said decree so appealed from, and said appellant is desirous that proceedings under said writ or said decree shall be stayed until the determination of said appeal:

Now, therefore, if said appellant shall prosecute said appeal to said effect, and answer all costs thereof, if he shall fail to make good his plea, and shall make indemnity sufficient to secure the sum recovered for the use and detention of said property, to-wit, said steamboat "Eugene," her tackle, apparel, and furniture, and pay the costs of the suit and just damages for delay and costs and interest on the appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

JOEL P. GEER. [Seal]

N. H. LATIMER. [Seal]

R. H. DENNY. [Seal]

Signed, sealed and delivered in the presence of:

W. A. Peters.

United States of America, }  
District of Washington, } ss.  
Northern Division. }

N. H. Latimer and R. H. Denny, being first duly sworn, each for himself deposes and says: That I am one of the sureties on the foregoing bond, and a resident and householder within said district, and am worth in property which is my separate estate, situated therein, the sum of five thousand (5,000) dollars, over and above all my just debts and liabilities, and exclusive of property exempt from execution.

N. H. LATIMER.

R. H. DENNY.

Subscribed and sworn to before me this 22d day of December, 1897.

[Notarial Seal] W. A. PETERS,  
Notary Public in and for the State of Washington, Residing at

[Endorsed]: Undertaking on appeal supersedeas. Filed December 23, 1897. In the U. S. District Court. R. M. Hopkins, Clerk.

**Citation on Appeal.**

(Copy.)

United States of America }  
 District of Washington. } ss.

To Gaston Jacobi and Charles Ruff, and to Fred M. Lyons, Walter M. Cary, and Edward J. Knight, Greeting:

Whereas, Joel P. Geer, claimant of the steamboat "Eugene," has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree rendered in the District Court of the United States for the District of Washington, Northern Division, in your favor, and has given the security required by law, you are therefore hereby cited and admonished to be and appear before said Circuit Court of Appeals at San Francisco, California, within thirty days from the date hereof to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Seattle, in said district, this 23d day of December, 1897.

C. H. HANFORD,

United States District Judge, Washington.

Served on me this 23 day of December, 1897.

JOHN C. HOGAN, and

PATTERSON & EASLY,

Proctors for Libelants and Intervenors.



[Endorsed]: Citation on appeal. Filed Dec. 23, 1897.  
In the U. S. District Court. R. M. Hopkins, Clerk. By H.  
M. Walthew, Deputy.

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*United States District Court for the District of Washington.*

GASTON JACOBI and Others

vs.

STEAMER "EUGENE," etc.

**Præcipe for Transcript on Appeal.**

To the Clerk of the above-entitled court:

You will please prepare and certify and send up to the  
Circuit Court of Appeals the record in the above case on  
appeal.

WILLIAMS, WOOD & LINTHICUM, and  
STRUDWICK & PETERS,

Proctors for Appellant.

[Endorsed]: Praeipice for record on appeal. Filed Dec.  
31, 1897. R. M. Hopkins, Clerk. H. M. Walthew, Dep-  
uty Clerk.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

vs.

No. 1,128.

STEAMER "EUGENE."

### **Order to Transmit Original Exhibits.**

Now, upon this 3d day of February, 1898, upon the representations of the clerk of this court that it is impracticable for the said clerk to copy the exhibits in this case, as also the copy of bill of sale of enrolled vessel, filed in this cause by respondent on Nov. 26, 1897, it is ordered by me that all original exhibits filed and introduced in this cause, together with said copy of bill of sale, be by the clerk of this court forwarded to the clerk of the Circuit Court of Appeals, there to be inspected and considered, together with the transcript on appeal in this cause.

C. H. HANFORD, Judge.

[Endorsed]: Order to transmit exhibits, etc. Filed Feb. 3, 1898. In the U. S. District Court. R. M. Hopkins, Clerk By H. M. Walthew, Deputy.

*In the District Court of the United States for the District of  
Washington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMER "EUGENE," Her  
Tackle, Apparel and Furniture, and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTATION  
COMPANY,

No. 1,128.

Respondent,

JOEL P. GEER,

Claimant.

**Clerk's Certificate to Transcript.**

United States of America, }  
District of Washington. } ss.

I, R. M. Hopkins, Clerk of the District Court of the United States for the District of Washington, do hereby certify the foregoing four hundred and forty-seven (447) typewritten pages, numbered from one (1) to four hundred and forty-seven (447), inclusive, to be a full, true, and correct transcript of the record on appeal, and all proceedings had in the above and therein entitled suit, and that the same constitutes the transcript of the record upon appeal

from the District Court of the United States for the District of Washington, Northern Division, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, save and excepting the original exhibits and a copy of bill of sale of enrolled vessel, which said exhibits and copy of bill of sale I am directed by the Judge of this court to transmit to the Circuit Court of Appeals, there to be inspected and considered, together with the transcript on appeal in this cause, a copy of which order so directing me will be found on page 447 of this transcript; and that the said transcript contains all that I am required to transmit by General Admiralty Rule 52 of the Supreme Court of the United States, excepting the said bill of sale and exhibits in said cause, in lieu of which I am directed by the Court to certify and transmit to the said Circuit Court of Appeals for the Ninth Judicial Circuit the originals thereof, as per order of Court hereinabove referred to.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of \$111.20, and that the same has been paid to me by Williams, Wood & Linthicum, and Strudwick & Peters, proctors for claimant and appellant.

Witness my hand and official seal, at Seattle, Washington, this 3d day of February, 1898.

[Seal]

R. M. HOPKINS,

Clerk.

**Citation on Appeal** (Original).

United States of America }  
District of Washington. } ss.

To Gaston Jacobi and Charles Ruff, and to Fred M. Lyons, Walter M. Cary, and Edward J. Knight, Greeting:

Whereas, Joel P. Geer, claimant of the steamboat "Eugene," has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Washington, Northern Division, in your favor, and has given the security required by law, you are therefore hereby cited and admonished to be and appear before said Circuit Court of Appeals at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Seattle, in said district, this 23d day of December, 1897.

[Seal]

C. H. HANFORD,  
United States District Judge, Washington.

Served on me this 23d day of December, 1897.

[Seal]

JOHN C. HOGAN, and  
PATTERSON & EASLY,  
Proctors for Libelants and Intervenors.

[Endorsed]: Filed Dec. 23, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

**SUPPLEMENTAL TRANSCRIPT OF RECORD.**

*In the District Court of the United States for the District of  
Washington, Northern Division.*

**Supplemental Transcript of Record.**

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE," and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTATION  
COMPANY, and All Others Whom it  
May Concern,

Respondents.

**Petition in Intervention of Walter M. Cary, Edward J. Knight,  
and Fred N. Lyons.**

To the Honorable C. H. HANFORD, Judge of the above-  
entitled court:

Now comes Walter M. Cary, a resident of the State of  
California, and Edward J. Knight, a resident of the State  
of Montana, and Fred N. Lyons, a resident of the State of  
Washington, both citizens of the United States, and re-



spectively petition the Court for leave to intervene in the above-entitled action as co-libelants therein, and that they be permitted to prosecute the above-entitled action as such co-libelants upon such terms as the Court may deem reasonable, and as grounds for such intervention, these petitioners respectfully show to the Court and allege:

### I.

That they are entitled to participate in any recovery which may be had herein by the libelants out of the condemnation and sale of the steamship "Eugene," mentioned in the original libel herein, and now in the custody of the Court by virtue of the marshal's attachment thereof, and that they ought to be permitted to share in such recovery to the extent of their respective claims against the said steamship "Eugene," as hereinafter more fully set forth.

### II.

They admit each and every allegation set forth in paragraph No. II of libelants' libel herein, and that the said steamship "Eugene," during the time therein and in this petition mentioned, was owned and operated by the said respondent, the Portland and Alaska Trading and Transportation Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon; and was the owner and engaged in operating the steamship "Bristol," mentioned in said libel, plying the waters between the city of Seattle, State of Washington, and the port of St. Michaels, Alaska, and that one E. B. McFar-

land was the general manager and F. C. Davidge & Company were the agents of said steamship company, respondent herein, and as such were duly empowered and authorized, on behalf of said respondent and of said steamship "Eugene," to enter into and make any and all contracts for the transportation of passengers, baggage, and freight from the said city of Seattle, State of Washington, to Dawson City, Northwest Territory, via said port of St. Michaels; and your petitioners further allege, in addition thereto, that the said respondent company was, during the times herein mentioned, a common carrier of passengers, baggage, and freight between the said places, and in the prosecution of its said business as such carrier it was operating the said steamships mentioned.

### III.

Your petitioner further alleges that on or about the 19th day of August, 1897, and prior and subsequent thereto, the said respondent, the Portland and Alaska Trading and Transportation Company, through its said general manager and agents, caused it to be publicly and extensively advertised that they would, on their said ships, the "Bristol" and said "Eugene," transport passengers, baggage, and freight from the city of Seattle, Washington, to said Dawson City, Northwest Territory, and would leave said city of Seattle, Washington, on or about the 20th of August, 1897, on said voyage, and that they would carry said passengers, baggage, and freight from Seattle, Washington, to St. Michaels, Alaska, upon the said steamship "Bristol," and that on said voyage the said steamship "Eu-

gene" would be towed by the said steamship "Bristol" to St. Michaels, Alaska, and at St. Michaels, Alaska, the said voyage would be continued on to said Dawson City, Northwest Territory, by the said steamship "Eugene"; that upon the good faith of said representations and particular representations made to these petitioners by the said general manager and agents of the said respondent, the Portland and Alaska Trading and Transportation Company, on or about the date aforesaid, engaged passage to make said voyage as aforesaid, and entered into a contract therefor, each for himself, with the said respondent for the conveyance of themselves and fifteen hundred pounds of baggage for each, from the city of Seattle, Washington, to said Dawson City, Northwest Territory, and by the terms thereof the said respondent, on behalf of said steamship "Eugene," contracted and agreed to prosecute said voyage with diligence, and that they would reach said St. Michaels, Alaska, on or about Sept. 10th, 1897, or within a few days thereafter, when the said steamship "Eugene" would proceed and continue the voyage to Dawson City, Northwest Territory, and land petitioners with their said baggage at Dawson City, Northwest Territory, within a reasonable time thereafter, and to that end these petitioners purchased passage for said voyage, each for himself, paying therefor the sum of three hundred dollars (\$300.00), and received therefor tickets issued by the said respondent company, good for such passage.

#### IV.

That petitioners, on their part, complied with all the

terms and conditions of the said contract, and on or about August 30th, 1897, started upon said voyage with the said steamships, that said "Eugene," being towed by the "Bristol," which proceeded thereon from the port of Seattle, Washington, for a distance of several hundred miles upon the said high seas, when the said steamship "Eugene" and the said respondent company abandoned the said voyage, and failed, refused, and neglected to keep said contract on their part, and put said petitioners off said ship at Victoria, British Columbia, and refused to carry them and their said baggage in accordance with said contract, or at all; that by reason of the failure of the said steamship "Eugene" and of said respondent, the Portland and Alaska Trading and Transportation Company, to perform its said contract with petitioners, petitioners suffered great loss, and were subjected to great delay, annoyance and worry; that petitioners, each for himself, paid out to respondents for said passage the sum of three hundred dollars (\$300.00), which respondents refused to return to them and that each for himself paid out for a miner's supply and outfit, intended for the use of petitioners at their said destination, the sum of three hundred dollars (\$300.00), which has been rendered valueless to said petitioners by reason of the abandonment of said voyage; that petitioners have been, each for himself, damaged in the sum of two hundred dollars (\$200.00) for the loss of seven weeks' time, to-wit, from August 18th, 1897, to October 10th, 1897, making in all eight hundred dollars damage to each of your said petitioners.

Wherefore, petitioners pray that they be permitted to intervene herein to prosecute this action as co-libelants,

upon complying with such terms as the Court may impose; that their said respective claims be allowed against the said steamship "Eugene," to-wit, that the Court decree a return to each of them of the said sum of three hundred dollars (\$300.00), paid out by them for passage; that each for himself recover the further sum of five hundred dollars (\$500.00) damages, in all the sum of eight hundred dollars (\$800.00); that the said steamship "Eugene" be condemned and sold to satisfy the same, and for such other and further relief as to this Court may seem just.

WALTER M. CARY, and  
EDWARD J. KNIGHT,

By JOHN C. HOGAN and  
PATTERSON & EASLY,

Proctors in Admiralty.

State of Washington, }  
County of King. } ss.

Walter M. Cary, being first duly sworn, upon oath says that he is one of the petitioners in the above-entitled action; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

WALTER M. CARY.

Subscribed and sworn to before me this 16th day of October, 1897.

G. E. de STEIGUER,  
Notary Public in and for the State of Washington, Residing at Seattle, Washington.

State of Washington, }  
 County of King. } ss.

John C. Hogan, being first duly sworn, on oath says that he is the attorney and proctor for Fred M. Lyons, one of the petitioners in the above-entitled action, and makes this verification in his behalf, for the reason that said petitioner is not now within the above-named district of Washington; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

JOHN C. HOGAN.

Subscribed and sworn to before me this 5th day of November, 1897.

[Notarial Seal]

T. H. CANN,

Notary Public in and for the State of Washington, Residing at Seattle, Washington.

Upon motion of proctors for libelants made in open court, leave to file the foregoing intervening libel is hereby granted; four days to answer.

Nov. 6, 1897.

C. H. HANFORD,

Judge of said Court.

Service of the within paper on the undersigned this 5th day of Nov., 1897, is hereby admitted.

WILLIAMS, WOOD & LINTHICUM, and  
 STRUDWICK & PETERS,

Attorneys for Claimant.

[Endorsed]: Intervening libel of Walter M. Cary, et al. Presented and offered for filing in my office, and fee for

filing paid to me, November 6, 1897, but withheld from filing awaiting stipulation for costs. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

*United States District Court for the District of Washington.*

GASTON JACOBI et al.,

vs.

STEAMER "EUGENE" et al.

**Praeceptum for Appearance.**

To the Clerk of the above-entitled court:

You will please enter our appearance as proctors for intervening libelants in the above-entitled cause.

PATTERSON & EASLY,

JOHN C. HOGAN.

[Endorsed]: Praeceptum for appearance. Presented and offered for filing in my office, and fee for filing paid to me, November 6, 1897, but withheld from filing awaiting stipulation for costs. R. M. Hopkins, Clerk. By H. M. Walthew, Deputy.

*In the United States District Court for the District of Wash-  
ington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMSHIP "EUGENE," and  
JOEL P. GEER,

Claimant.

**Stipulation.**

It is hereby stipulated and agreed by and between the parties to the above-entitled action that upon the filing of this stipulation the above cause may be set down for trial by the Court so as to be tried on the 27th day of November, 1897, or on as early a date thereafter as the Court may fix. It is further stipulated that the cause as to the intervening libelants herein shall be submitted and tried at the same time as the principal cause, and shall abide the issues therein; that the answer of claimant herein shall stand as the answer to intervening libel, and all evidence introduced in reference to libelants Jacobi and Ruff shall be considered as applying also to intervening libel-



ants: and all evidence on behalf of claimants shall be considered against said intervening libelants.

Nov. 20, 1897.

STRUDWICK & PETERS, and

WILLIAMS, WOOD & LINTHICUM,

Proctors for Claimant.

JOHN C. HOGAN,

Proctor for Libelants.

PATTERSON & EASLY,

For Intervening Libelants and for Libelants.

[Endorsed]: Stipulation. Filed Nov, 24, 1897. In the U. S. District Court. R. M. Hopkins, Clerk. By H. M. Waltheu, Deputy.

*In the United States District Court for the District of Wash-  
ington, Northern Division.*

GASTON JACOBI and CHARLES  
RUFF,

Libelants,

vs.

THE STEAMER "EUGENE," and  
THE PORTLAND AND ALASKA  
TRADING AND TRANSPORTATION  
COMPANY

No. 1,128.

Respondents.

JOEL P. GEER,

Claimant.

**Clerk's Certificate.**

United States of America, }  
District of Washington. } ss.

I, R. M. Hopkins, clerk of the District Court of the United States for the District of Washington, do hereby certify the foregoing eight (8) typewritten pages, numbered from one (1) to eight (8), inclusive, to be a supplemental transcript to the original transcript on appeal in this cause, certified by me on February 3, 1898, and that the same is a full, true, and correct transcript of the inter-

vening libel of Walter M. Cary, Edward J. Knight, and Fred N. Lyons, and praecipe for appearance of John C. Hogan, Esq., and Messrs. Patterson & Easley, proctors for said intervening libelants, which said intervening libel and appearance of proctors was presented and offered for filing in my office, and fee for filing same paid to me, November 6, 1897, but withheld from filing awaiting stipulation for costs; and I further certify that the stipulation, on page 8 hereof, is a copy of the original stipulation filed in the above-entitled cause on the 24th day of November, 1897, and that a copy of said original stipulation will be found on page 126 of the original transcript in this cause; and I further certify that the intervening libel hereinbefore referred to is the intervening libel of Walter M. Cary, Edward J. Knight, and Fred N. Lyons referred to in the final decree of this Court, made and entered on the 7th day of December, 1897, a copy of which final decree will be found on pages 405 to 407 of the original transcript on appeal in this cause.

And I further certify that the reason I did not include as a part of said original transcript the intervening libel of Walter M. Cary, Edward J. Knight, and Fred N. Lyons, and the praecipe for appearance of proctors for said intervening libelants, is, that at the time of the presentation and offering of the said intervening libel and praecipe for appearance no bond or stipulation for costs was presented or offered for filing.

I further certify that the said original intervening libel of Walter M. Cary, Edward J. Knight, and Fred N. Lyons,

and the praecipe for appearance of John C. Hogan, Esq., and Messrs. Patterson & Easley, proctors for said intervening libelants, presented and offered for filing in my office on the 6th day of November, 1897, are still, and always have been since said date, in my office at Seattle.

I further certify that the cost of preparing and certifying the foregoing supplemental transcript on appeal is the sum of two dollars and thirty-five cents (\$2.35), and that the same has been this day paid to me by John C. Hogan, Esq., and Messrs. Patterson & Easley, proctors for said intervening libelants.

Witness my hand and official seal at Seattle, Washington, this 8th day of February, 1898.

[Seal]

R. M. HOPKINS,

Clerk.

[Endorsed]: Filed Feb. 11, 1898. F. D. Monckton, Clerk.

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[Endorsed]: No. 430. In the United States Circuit Court of Appeals, Ninth Circuit. Joel P. Geer, Appellant, v. Gaston Jacobi and Charles Ruff et al. Transcript of Record. Appeal from the United States District Court, District of Washington.

Filed February 7, 1898.

F. D. MONCKTON,

Clerk.